

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(4 Lower Field Ct.)		
11 th Election District	*	OFFICE OF
5 th Council District		
Howard & Barbara Neels	*	ADMINISTRATIVE HEARINGS
<i>Legal Owners</i>		
	*	FOR BALTIMORE COUNTY
Petitioners		
	*	Case No. 2019-0305-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed on behalf of Howard & Barbara Neels, legal owners (“Petitioners”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”): (1) to amend the Final Development Plan (“FDP”) for Batter Brook Farms; and (2) to eliminate the division line between Lots 42 and 55 and relocate Lot 42 to Parcel B. A site plan was marked and admitted as Petitioners’ Exhibit 1.

Howard Neels and David Billingsley appeared in support of the petition. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Environmental Protection and Sustainability (“DEPS”) and the Department of Planning (“DOP”). The DOP opposed the request.

Petitioners own three separate tracts of land shown on the Final Development Plan for Batter Brook, a 55 lot subdivision in the Kingsville area approved by Baltimore County in 1991. Petitioners own and reside in an historic home on Lot 55 (approx. 27 acres in size) as shown on the plan. Petitioners also own an adjoining lot (No. 42, approx. 1.67 acres) which is unimproved and a 42+/- acre tract shown on the plan as Parcel B. Together these three tracts constituted a large

part of the farm which was operated on the property before the subdivision was approved in 1991.

Petitioners recently discovered the underground trenches used in their on-site waste disposal facility encroached upon the adjoining lot (Lot 42) they own. Petitioners employed a septic system contractor which field-located the trenches and verified using GPS that they encroached upon Lot 42. See Pets. Exhibit 12. Petitioners are exploring the possibility of selling all three tracts of land and are concerned that the septic system encroachment would present a legal impediment preventing the transfer of Lots 42 and/or 55.

As such, Petitioners filed a request with the Development Review Committee (“DRC”) to “eliminate the division line between Lots 42 and 55” and designating Parcel B as Lot 42. *See* Pets. Ex. 17. The DRC approved that request by letter dated October 3, 2018 (Ex. 16), and this proceeding is only to consider the amendment of the Final Development Plan (“FDP”). As noted in the DEPS ZAC comment, the reconfiguration of Lots 42 & 55 is a development matter, and the Administrative Law Judge (“ALJ”) cannot create or alter lot lines.

An amendment of a Final Development Plan is governed by BCZR §1B01.3.A.7., which requires among other things that the amendment be “consistent with the spirit and intent of the original plan.” I believe Petitioners satisfy this requirement. Most significantly, the density for the subdivision will not change. Petitioners presented a 1992 Declaration of Covenants (Ex. 18) filed among the land records which was created in connection with the 1991 subdivision. That documents restricts the density to “fifty-five dwelling units,” and Petitioners’ request would not violate that restriction. *See* Ex. 18 at p. 11.

The DOP opposed the request and opined that constructing a dwelling on Parcel B as shown on the 1991 development plan would obstruct a view shed and run afoul of a concession made by the developer to gain community support for the project. As an initial matter, there is nothing in

the aforementioned covenant agreement which would prevent a dwelling from being constructed on Parcel B. It is true, as noted by the DOP, the 1991 development plan indicated Parcel B was “not a buildable lot.” Petitioners, who have owned the property since 1992, explained that was because the property at that time did not “perc,” meaning a septic waste disposal system could not be installed. At present however, Petitioners had soil percolation tests performed on Parcel B (as shown on the plan submitted as Ex.13) and DEPS has approved the installation of a septic system to serve a single-family dwelling to be constructed on that parcel. See Ex. 14. In these circumstances I believe Petitioners request is within the spirit and intent of the original 1991 plan and will not have a detrimental impact upon the community.

THEREFORE, IT IS ORDERED this 3rd day of **June, 2019** by this Administrative Law Judge, that the Petition for Special Hearing to amend the Final Development Plan (“FDP”) for Batter Brook Farms to eliminate the division line between Lots 42 and 55 and relocate Lot 42 to Parcel B, as approved by the DRC, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.

Any appeal of this decision must be filed within thirty (30) days of the date of this Order.

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln