

IN THE MATTER OF THE
THE APPLICATION OF
DENNIS G. MCGEE
FOR A SPECIAL HEARING ON
PROPERTY LOCATED ON THE WEST-
SIDE FALLS ROAD, 2500 FT. S
OF BENSON MILL ROAD
(15906 FALLS ROAD)
5TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 94-42-SPH
* * * *

OPINION

Dennis McGee filed a Petition for Special Hearing through his attorney Hurst R. Hessey, Esquire, seeking approval to combine two lots for the purpose of obtaining a building permit for single family dwelling. This petition was denied by Order of the Zoning Commissioner and subsequently appealed to this Board. At the hearing on the Petition, the Board received testimony and evidence from which we find the following facts.

Bessie R. Curtis, widow of Levy Curtis, originally owned approximately 14 acres of land in northern Baltimore County. This 14-acre parcel was located adjacent to Falls Road and was roughly J-shaped. The tract is and has been zoned R.C.2 since 1979 and is improved with a single family dwelling and several outbuildings. The dwelling is located on the front portion of the property, immediately next to Falls Road.

On or about May 6, 1971, Mrs. Curtis transferred approximately 1.451 acres to her son, Thomas Curtis, and his wife, Dorothy R. Curtis. Ultimately, the younger Mr. Curtis constructed a single family dwelling on that lot. That conveyance reduced Mrs. Curtis' holdings to 12.5 acres, more or less. Thereafter, on or about April 26, 1973, Mrs. Curtis conveyed a second parcel of approximately .7 acres to the Baltimore Gas and Electric Company (BG & E). Apparently, the purpose of this transfer was to provide an area for BG & E to construct a utility tower for the Company's

Case No. 94-42-SPH Dennis G. McGee /Petitioner 2

power grid through northern Baltimore County. The significance and legal effect of that transfer is disputed by and between the parties hereto and will be addressed hereinafter in this opinion. In any event, subsequent to these conveyances, Mrs. Curtis was left with approximately 12 acres, unencumbered and in-fee.

Baltimore County adopted the R.C. zoning classification on November 24, 1979. As of that date, Mrs. Curtis' parcel was zoned R.C.2. Mrs. Curtis passed away in February, 1983 and by her Will, divided the 12-acre tract among her three children. On August 17, 1984, the three children filed a Deed in Lieu of Partition in the Land Records of Baltimore County dividing the 12-acre tract into three parcels of approximately 4 acres each. As shown on the Plat, (Petitioner's Exhibit #1), the first parcel located towards the front of the original tract and containing the original dwelling was conveyed to Mary V. Kohler, a daughter. A second parcel was conveyed to Thomas Curtis which was located to the rear of the original tract, adjacent to the 1.451 acres previously conveyed to him, providing Mr. Curtis with two abutting lots and a combined total of approximately 5.5 acres. The third parcel, also located to the rear of the original tract, was conveyed to Martha Kohler as Trustee for her brother, Harry Curtis. This parcel was subsequently sold to a third party, Michael Lee, et al. Mr. Lee conveyed his interest in the property in 1986 to the present owner and Petitioner, Dennis McGee. It is agreed by the parties that the Petitioner purchased the property with the intention of constructing a single family residence there, believing the property constituted a buildable lot. However, no construction has taken place.

As noted above, the property is zoned R.C.2 and has so been

Case No. 94-42-SPH Dennis G. McGee /Petitioner 3

zoned since the adoption of the R.C. zoning classification on November 24, 1979. The R.C. regulations provide that no lot having an area of less than 1 acre can be created in an R.C.2 zone. (See Section 1A01.3.B.2 of the B.C.Z.R.). Moreover, as to residential density in an R.C.2 zone, the regulations provide that any lot having a gross area of between 2 and 100 acres may be subdivided into no more than two (2) lots total. (See Section 1A01.3.B.1 of the B.C.Z.R.). In view of these density requirements, a question arose as to the propriety of the subdivision of this 12-acre tract by recordation of the deeds partitioning the property to Mrs. Curtis' three children.

Mr. McGee now argues that a density unit is attributable to the .7 acre parcel which was transferred to BG & E by Mrs. Curtis in 1973. Thus, he intends on seeking a transfer of that density unit to his 4-acre parcel, thereby permitting a single family dwelling to be constructed thereon. The first issue presented questions the nature of the conveyance of the .7 acre parcel by Mrs. Curtis to BG & E in 1973. Essentially, the Valleys Planning Council (VPC) contends that the conveyance was nothing more than the granting of an easement for utility line use by BG & E. Thus, VPC contends that no .7 acre "lot" was created and that there is no density unit attributable to that lot. VPC claims that the Estate of Bessie Curtis continues to own the .7 acre parcel, subject to BG & E's easement.

A review of the deed of conveyance for this tract, recorded among the Land Records of Baltimore County at Liber 5355, Page 052, is necessary to resolve this questions. This deed was presented into evidence in this case as VPC's Exhibit 1. After reviewing the deed, it is clear that the conveyance from Bessie Curtis to BG & E

Case No. 94-42-SPH Dennis G. McGee /Petitioner 4

was a fee-simple transfer. The clear and unambiguous language of the deed is persuasive. Specifically, the deed states that Mrs. Curtis conveyed the subject .7 acre parcel "unto the said Baltimore Gas and Electric Company, its successors and assigns, in fee simple..." (emphasis added). Elsewhere in the document, a legal description of the .7 acre parcel is provided. However, after the reservation clause, the deed provides that the property will be conveyed "Together with any, all and every the rights, alleys, ways, waters, privileges, appurtenances, and advantages to same belonging or in any wise appertaining." The "to have and to hold" portions of the deed likewise reference the fact that the conveyance is in fee-simple.

Admittedly, Mrs. Curtis did retain a right to utilize the property. That is, it is provided that she would continue to have the right to farm the property and cross said parcel. However, her interest is the reservation of an easement in a fee-simple conveyance rather than an easement conveyance as argued by the VPC. I see no evidence in the deed or otherwise that the conveyance to BG & E is anything less than fee-simple, with a reserved easement.

Having there determined that Bessie Curtis conveyed a fee-simple interest to BG & E in 1973, the next question presented relates to the "density", if any, allocated to that .7 acre parcel as of the date of the adoption of the R.C. zoning classification in Baltimore County.

As I have indicated above, the Curtis to Baltimore Gas and Electric transfer of a parcel of ground in 1973 created a "lot" as that term is defined in Sec. 101 of the B.C.Z.R. since it was "a parcel of land with boundaries as recorded in the Land Records of Baltimore County on the same date as the effective date of the

Case No. 94-42-SPH Dennis G. McGee /Petitioner 5

zoning regulations which governs the use, subdivision, or other condition thereof". Since it was recorded in 1973, it preexisted passage of the R.C.2 legislation in 1979. By its terms, the deed passed the ground in fee-simple absolute, however, it was subject to an easement and to a covenant.

The owner of real property in fee-simple absolute has the right to build upon one's own land. That right is subject to all applicable provisions of law and is not a grant of favor from governmental authority. In the absence of enforceable restrictive covenants from the deed, or restrictions duly imposed by zoning authorities, a property owner has the right to use the property as he sees fit, as long as the use does not constitute a nuisance. Feldman vs. Star Homes, Inc. 199 MD 1 (1952); Kulbitsky vs. Zimnoch 196 MD 504, 77 A.2nd 14 (1950). Just prior to the passage of legislation creating the RC zones, which now prohibits the creation of lots less than an acre, assuming there were no other voluntary restrictions, BG & E would have had a right to build upon its lot even if it were undersized, if all the other tests of Sec. 304 of the B.C.Z.R. could have been met.

The BG & E lot may have possessed the right to build due to the language of the R.C. zones which speaks in terms of principal dwellings on parcels and rights of subdivision, rather than "density". Even though less than 2 acres in size and thus not legally capable of subdivision, the "lot" would in some circumstances permit the construction of a principal dwelling. However, that right to develop the lot, or in other words that development right, became lost when the Baltimore County Council passed the R.C. zone legislation. The law of zoning holds that this Board, when making decisions, must apply the existing law to

Case No. 94-42-SPH Dennis G. McGee /Petitioner 6

a case. Changes in zoning law apply prospectively only in the absence of intent expressed of the County Council to apply the law retroactively. Unless development rights have become vested, they can be lost in the enactment of more restrictive zoning laws. There is no vested right in zoning until construction is substantially begun. Rockville Fuel vs. Gaithersburg 266 MD 117, 291 A.2nd 672; Colwell vs. Howard County 31 MD Ap 8 354 A.2nd 210. Therefore, even if BG & E possessed the right to build upon the .7 acre lot, no evidence appears in this case that that development right had been vested in BG & E prior to the passage of the R.C.2 legislation. When that legislation passed, it obliterated whatever non-vested right to build upon the .7 acre lot BG & E possessed. Therefore, if BG & E Company does not possess the right to build upon the .7 acre lot, then clearly, there is no right to build that it can transfer to McGee.

The more interesting question arises as to whether or not the 12 acre site possessed by Mrs. Curtis as of the date of the passage of the R.C. legislation would permit construction of another principal dwelling once it was subdivided upon the distribution of her estate. Without a lengthy analysis, suffice it to say that petitioner already tried that approach in a previous case before this Board, Case No. 90-62-SPH. The Board, as then constituted, in its opinion, noted that the Board is unable to grant the relief requested by the petitioner for the same reasons given by the D.Z.C. below, namely that the property rights of other individuals were involved in the proceedings and those individuals had not been joined in the petition. No appeal was taken from that order to the Circuit Court, and that stands as a concluded final order of the Board. It would be res judicata for petitioner to attempt in this

Case No. 94-42-SPH Dennis G. McGee /Petitioner 7

case, or to attempt to salvage his petition by arguing that no right to build or develop was transferred from Bessie Curtis to BG & E, and therefore it was retained in the 12 acre site and now could be accorded to his lot which is parcel 3.

Accordingly, we deny the petition for Special Hearing and its requested relief. The Board would refer Petitioner to Section 26-173 of the Baltimore County Code, which provides for the rescission of the conveyance and return of any deposit or purchase money paid, as well as reimbursement for reasonable expenses, including attorney's fees, incurred in connection with the transfer of land in an unapproved subdivision.

ORDER

IT IS THEREFORE this 5th day of October, 1994 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing seeking approval to combine two lots for the purpose of obtaining a building permit for a single family dwelling be and is hereby DENIED.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William Clark
C. William Clark
S. Diane Levero
S. Diane Levero

IN THE MATTER OF
THE APPLICATION OF
DENNIS G. MCGEE -Petitioner
FOR A SPECIAL HEARING ON PROPERTY
LOCATED ON THE WEST SIDE FALLS
ROAD, 2500' SOUTH OF BENSON MILL
ROAD (15906 FALLS ROAD)
5TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 94-42-SPH
* * * *

DISSENTING OPINION

In Case No. 94-42-SPH, Dennis G. McGee, Petitioner, as a result of open deliberations, the Board will split, two for the denial of the Petition for Special Hearing and this member respectfully dissenting from the majority opinion for the following reasoning.

In 1932, Mr. and Mrs. Curtis acquired a 14-acre parcel zoned RDP. The RDP zoning addresses only the lot size restriction of one acre per lot, and does not address any density requirements. Under RDP, it is assumed that all such created lots are buildable parcels. In May of 1971, a 1.4-acre parcel was deeded to the son, Thomas Curtis, who erected a residence on the 1.4 acres, which is permissible under the RDP. In April 1973, 3/4 acre of land in fee simple was deeded to the Baltimore Gas & Electric Company (hereinafter "BG & E") for the erection of a transmission tower, which was permissible under the RDP zoning. While this .7 acre of land deeded to BG & E did not meet the required one-acre minimum under the existing RDP regulations, a lot was recorded in fee simple and accepted by Baltimore County as a recorded lot, and as such it must be assumed that it was eligible for a permit to erect a residence, all other conditions being complied with. This now

leaves 12 acres of RDP land owned by Mrs. Curtis.

In November of 1979, the RDP zoning was changed to R.C. 2. Mrs. Curtis passed away in 1983 and, by her will, the 12 acres were divided into three 4-acre units and deeded to her three children. One lot of 4 acres was deeded to Thomas Curtis, said lot abutting his already existing 1.4-acre parcel; one lot of 4 acres to the daughter, Martha Kohler, with an existing house already on the lot; and the third lot of 4 acres to Martha Kohler by her brother. This lot was sold in fee simple to Mr. Michael Lee, who in turn sold it to Mr. McGee, with every expectation that he could erect a residence on this 4-acre parcel. At this time, Baltimore County declared the subdivision to be an illegal subdivision, and denied Mr. McGee's permit for the erection of a residence. The Board will note that at this time the property had already passed the perk test and had a well drilled and accepted by Baltimore County, and an access easement provided to the site.

Mr. McGee, in order to obtain a density unit, comes to this Board under petition to transfer the unused density unit from the .7-acre BG & E parcel to what is known on the plat as Lot 3 in order to build a residence. Baltimore County regulations 500.7 permit the density transfer as requested. There was no objection by BG & E of any transfer of density from the .7-acre parcel before either the Zoning Commissioner or the Board of Appeals. Surely if BG & E objected to the loss of this density unit, they had ample opportunity to so indicate. The obvious truth of the matter is that they purchased the property to erect a transmission tower,

have erected a transmission tower, and in no way anticipate the erection of a residence on this site, and therefore take no issue with the proposed transfer of the density unit.

This Board member avers that there was an unspoken density unit attributed to this parcel in 1973, and that the deed to this parcel was recorded in fee simple with only the reservation allowing passage across the property or its use as farmland if so desired. This Board member is of the opinion that there did in fact exist a density unit in 1973 when the lot was recorded, that density unit has never been used, and that it is available for transfer to Lot 3 owned by Mr. McGee in order to build a residence. The erection of this proposed residence is in absolutely no way detrimental to any other property owner in the area, nor is it detrimental in any way whatsoever to Baltimore County. The relief sought in this Petition is merely that Mr. McGee be permitted to erect his residence on this site. This Board member will respectfully dissent from the denial of the special hearing and would grant the special hearing as petitioned.

BY: *William T. Hackett*
William T. Hackett, Chairman

DATE: October 5, 1994



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

October 5, 1994

Douglas Worrall, Esquire
Smith, Somersville & Case
100 Light Street
Baltimore, MD 21202

RE: Case No. 94-42-SPH
Dennis G. McGee - Petitioner

Dear Mr. Worrall:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter. Also enclosed is a copy of the Dissenting Opinion of William T. Hackett.

Very truly yours,
Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

encl.

cc: Margaret Worrall, Valleys Planning Council
Hurst R. Hessey, Esquire
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director/ZADM

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IN RE: * BEFORE THE
PETITION FOR SPECIAL HEARING * ZONING COMMISSIONER
W/S Falls Road, 2500's of the * OF BALTIMORE COUNTY
C/1 of Benson Mill Road * Case No. 94-42-SPH
(15906 Falls Road)
5th Election District
3rd Councilmanic District

MEMORANDUM ON BEHALF OF
VALLEYS PLANNING COUNCIL, INC.

Dennis G. McGee ("McGee") has continued his quixotic quest for succor from a bad business deal. He seeks yet again to have Baltimore County grant him a special favor in order to overcome an illegal subdivision.

McGee first tried, in Case No. 90-62-SPH, to impose a non-density transfer affecting two parcels of land in which he had no interest. Despite the express invitation to join the owner of those two parcels in the proceeding, McGee declined to do so and his petition was denied for lack of a necessary party. He was informed by the County Board of Appeals that there was a method for relief available to him under Section 22-44 of the Baltimore County Code.¹

Ignoring the advice of the County Board of Appeals, McGee took a second tack by filing for a reclassification of his land from RC-2 to RC-5. This inappropriate attempt at spot zoning was rejected in Case No. R-91-363.

¹No explanation has been given why McGee has not sought such an easy solution to his problem. There is a second easy solution he could follow as discussed *infra*. Neither of the easy solutions does violence to the zoning scheme.

Having incurred unwarranted costs and expenses in pursuing two unjustified attempts to circumvent the zoning regulations, McGee comes back a third time with yet another effort to undercut zoning regulations. Again, he ignores the easy way.

The genesis of McGee's problem is the illegal action of the Curtis family in subdividing a single parcel. McGee owns one of the sub-parcels and the Curtis family owns the remainder of the parcel. If McGee chooses not to exercise his rights under Section 22-44 of the Baltimore County Code, he can name the Curtis family in a zoning petition or, more properly, in a declaratory judgment action and have assigned to his parcel a building right leaving to the Curtis family (the authors of his problem) whatever other building rights remain.²

Turning to the relief requested, McGee suggests that a "transfer of a density unit" can be effected from 0.7 acres which lies adjacent to his lot. The relief must be denied because (1) he has failed to join necessary parties, (2) the 0.7 acres was not a lot of record in 1979, (3) the 0.7 acres is not entitled to have a house built on it, and (4) transfers of density units are not permitted in an RC-2 zone.

I. McGee Has Failed to Join Necessary Parties.

The land in question which McGee wishes to consolidate with his parcel is erroneously referred to as "an adjoining lot

²With such a simple solution that could have been pursued long ago and even now could be pursued, one has to wonder why McGee continues to waste his money.

owned by Baltimore Gas and Electric Company." In fact, BG&E does not "own" an adjoining lot.

As noted in the several records made by McGee, Levy and Bessie Curtis owned 14 acres. After Levy's death, Bessie conveyed 1.451 acres of the 14 acres to her son. Then on April 26, 1993, Bessie granted to BG&E certain rights to use 0.7 acres of the remainder of the 14 acres to erect a transmission line. This conveyance was recorded in the Land Records of Baltimore County at Liber 5355 folio 52, a copy of which is attached hereto as Exhibit 1.

A review of the conveyance illustrates that all BG&E received was an easement to establish transmission lines. Bessie Curtis retained the right on behalf of herself and her heirs and assigns "to farm and use the same in any other manner" so long as such use does not interfere with BG&E's facilities. Of note, however, Bessie Curtis was expressly precluded from erecting any "buildings or structures."

When Bessie Curtis died, her estate succeeded to her interest in the 14 acres (less the 1.451 acres earlier conveyed to her son). Martha V. Kohler was appointed personal representative. As part of the administration of the estate, Ms. Kohler conveyed part but not all of Bessie Curtis' interest in the remaining part of the 14 acres. By deed dated February 4, 1984, which is recorded in the Land Records of Baltimore County at Liber 6671 folio 814 and attached hereto as Exhibit 2, Ms. Kohler subdivided the parcel by

conveying 12 acres to herself and members of her family. The 0.7 acres over which BG&E has an easement was retained in the estate.³

There is then a necessity to join Bessie Curtis' estate as a necessary party. McGee has failed to do this and thus this petition suffers the same fatal defect McGee's first petition suffered - a lack of a necessary party.

II. The 0.7 Acres Was Not A Lot Of Record In 1979.

The petition of McGee presumes that the 0.7 acres has a "density unit," without explanation of what a density unit is or how the land received such status. Presuming a density unit is the right to build a house (which under RC-2 zoning is a fallacious presumption as discussed *infra*), it is assumed that McGee takes the position that because the conveyance to BG&E predated the RC-2 zone, the 0.7 acres is a "lot of record" as defined in Sec. 101 of the Zoning Regulations. With that status it is further assumed that McGee argues that the 0.7 acres is entitled to have a house built upon it.

The 0.7 acres is not a "lot of record" based upon the conveyance to BG&E.⁴ As discussed, the conveyance is nothing more than the grant of an easement to BG&E to construct and maintain transmission lines. The 0.7 acres was simply a portion of the remaining part of the 14 acre tract and was described but only for

³A search of the land records does not reveal any out-conveyance of Bessie Curtis' interest in the 0.7 acres and thus her estate remains in title.

⁴Interestingly enough, the 0.7 acres does become a lot of record in 1984 when Ms. Kohler conveys off the 12 acres. That status in 1984 does not help McGee's cause.

the purpose of locating where BG&E could construct its transmission lines.

To suggest that the 0.7 acres became a lot of record by virtue of allowing BG&E to construct transmission lines over it would mean that all those utility easements which exist throughout the RC-2 zone are suddenly lots of record with all the implications for development that would mean. If that suggestion has merit, then the *raison d'être* for RC-2 disappears.

III. The 0.7 Acres Is Not Entitled To Have A House Built Upon It.

The other half of McGee's equation is that since the 0.7 acres is a lot of record it is entitled to have a house built upon it. Quite apart from the agreement between Bessie Curtis and BG&E that no house would be built, the zoning regulations expressly preclude a house being built upon a tract of land within the RC-2 zone where the tract is smaller than 1 acre. Sec. 304.1 of the Zoning Regulations, says:

A one-family detached or semi-detached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:

A. such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955.

In an RC-2 zone, the area regulations require a lot size of at least 1 acre. Sec. 1 A01.3(B)(2). The 0.7 acres was not recorded prior to March 30, 1955.

Thus, whatever merit there may be to any other argument McGee may make, whatever may be transferable from the 0.7 acres, the right to build a house does not exist. What does not exist cannot be transferred.

IV. Transfers Of Density Units Is Not Permitted In An RC-2 Zone.

It is readily acknowledged that not only private developers but also Baltimore County officials have spoken of density transfers within the RC-2 zone. Indeed, one or more decisions emanating from the Zoning Commissioner's Office have used such concept. The concept, however, is wholly illegal and past errors should not be repeated.¹

In the first instance, the concept of density has no meaning in the RC-2 zone contrary to other classifications. There are no limitations in RC-2 as to how many dwelling units might be constructed on a lot except that only one "principal dwelling" is permitted. Sec. 1A01.3(b)(4). Thus, there is no "density" as such which can be transferred. Rathkopf, The Law of Zoning 4th Ed., Sec. 34.03 (Clark Boardman Callahan 1993).

In the second instance, "density" does not have independent existence such as a franchise or a license and thus cannot be transferred from place to place or person to person. Density is a concept relating to the number of things, i.e. housing units, bedrooms, people, etc. in ratio to a geographical area, i.e.

¹No position is taken on so-called density transfers in other zoning classifications other than RC-2.

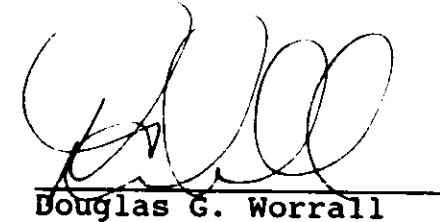
per square foot, per acre, etc. The concept has meaning only when both portions of the equation remain in existence.

In the third instance, what is it that McGee wants from the 0.7 acres? Since under the RC-2 zoning regulations there are no limits on the number of residential units which can be built (apart from the minimum lot size of 1 acre) does he get just the principal dwelling, or the tenant houses also? If he takes the principal dwelling, do the tenant houses remain behind? Or maybe he gets a tenant house? These questions, of course, are ludicrous because in the RC-2 there is no density to be transferred.

V. Conclusion.

McGee presents a sad case until a moment is taken to realize how much harm he or his advisors have inflicted upon himself. When confronted with the initial problem, he should have rescinded his deal. Absent that a simple claim against the Curtis family would have given him his building.

It is unnecessary to bend the zoning regulations to serve McGee's needs.


Douglas G. Worrall
Smith, Somerville & Case
100 Light Street, Sixth Floor
Baltimore, MD 21202-1084
Attorneys for Valleys Planning
Council, Inc.

HESSEY & HESSEY, P.A.
ATTORNEYS AT LAW
2400 CHARLES CENTER SOUTH
38 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201-3010
(410) 538-3300
FAX (410) 538-3305

November 5, 1993

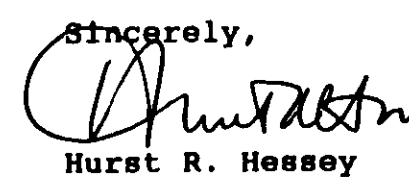
Mr. Lawrence Schmidt,
Zoning Commissioner
Zoning Administration
and Development Management
111 Chesapeake Avenue
Room 109
Towson, Maryland 21204

Re: Petitioner: Dennis G. McGee
Case No.: 94-42-SPH

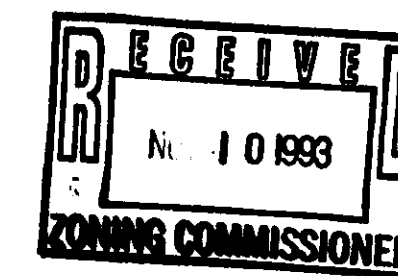
Dear Mr. Schmidt:

Enclosed please find for filing Petitioner's Response to Memorandum on Behalf of Valleys Planning Council, Inc.

Thank you for your assistance.

Sincerely,

Hurst R. Hessey

HRH:da
encl.
cc: Mr. Dennis McGee (w/encls.)
Douglas G. Worrall, Esquire (w/encls.)
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ZADM

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
W/S Falls Road, 2500'S of the * ZONING COMMISSIONER
C/O of Benson Mill Road * OF BALTIMORE COUNTY
(15906 Falls Road) *
5th Election District * Case No.: 94-42-SPH
3rd Councilmanic District *

RESPONSE TO MEMORANDUM
ON BEHALF OF
VALLEYS PLANNING COUNCIL, INC.

Petitioner, Dennis G. McGee, by his attorney, Hurst R. Hessey, respectfully submits this Response to Memorandum on behalf of Valleys Planning Council, Inc. (the "Council").

I. STATEMENT OF THE CASE

Petitioner, Dennis G. McGee, owns a tract of land located in the 3rd Councilmanic District, 5th election district, Baltimore County, consisting of 4.00 acres, more or less, known generally as 15906 Falls Road (the "Property").

The Petitioner has requested a special hearing to consolidate the Property with an adjoining lot owned by Baltimore Gas and Electric Company, consisting of .7 acres more or less (the "BG&E Lot"), and transfer the density unit of the BG&E lot to his Property, for the purpose of obtaining a building permit for a single family residential unit on the Property. The matter was heard by Lawrence E. Schmidt, Zoning Commissioner, on October 21, 1993.

The recent history of the Property is somewhat complicated. The subject Property was part of a 12.00 acre tract (the "Tract")

zoned R.C. 2 located off Falls Road. The Property consists of 4.00 acres which Petitioner purchased from Michael Lee ("Lee") by deed dated November 7, 1986. At the time of the purchase, Lee represented to Petitioner that the Property was a buildable lot, and Petitioner subsequently obtained all necessary financing for the construction of a home. However, upon application for building permit approval by the Zoning Office, he was advised that the subdivision of the 12.00 acre Tract into the three lots was an illegal subdivision, as the R.C.-2 classification permits subdividing into only two lots.

In 1932, by deed dated March 15, 1932, the 12.00 acre Tract and an additional 2.00 acres, more or less, were purchased by Levy and Bessie Curtis. Subsequently, by deed dated May 6, 1971, Bessie A. Curtis, then a widow, transferred 1.451 acres of the 14.00 acres, more or less, to her son, Thomas Curtis and Dorothy R. Curtis, his wife. Thereafter, .7 acres of the remaining acreage was acquired by Baltimore Gas and Electric Company in 1973. This is the BG&E Lot (the deed for which is attached as Exhibit 1 to the Council's Memorandum). After this conveyance to Baltimore Gas and Electric Company, there remained only the 12.00 acre Tract. Bessie Curtis passed away in February, 1983, and by will divided the Tract among her three children. On August 17, 1984, the three children filed a deed in lieu of partition in the Land Records of Baltimore County dividing the remaining 12.00 acre Tract illegally into three parcels. Since 1984, there has been no construction on any of the three parcels. One parcel was given to a daughter, Martha Kohler,

who has since passed away. She left that parcel to Thomas Curtis' daughters. The second parcel was deeded to Thomas Curtis, the owner of an adjoining tract of land, not part of the 12 acre Tract, and the third parcel was deeded to Martha Kohler as Trustee for her brother, Harry Curtis. It is this third parcel (the "Property") that was subsequently sold in 1984 to Petitioner's predecessor in interest, Lee.

After failing to obtain a building permit for the Property, Petitioner filed a Petition for Special Hearing (case No.: 90-62-SPH) which essentially requested that the division of the Tract be resolved in such a way that would enable Petitioner to get his building permit. The Commissioner denied Petitioner's request, primarily due to the failure of Thomas Curtis to agree to transfer his interest in any existing density unit related to his land, and his failure to take any other action that would alleviate Petitioner's problem.

Petitioner appealed the decision of the Commissioner to the County Board of Appeals. After a hearing before the Board on August 17, 1990, the Board denied the Petitioner's request, once again finding Thomas Curtis' action was necessary but not forthcoming.

The Board further found, as did the Commissioner, that the division of the Tract into three lots was an illegal subdivision in violation of Section 1A01.3 of the B.C.Z.R. As a result, the

Petitioner sought a change in the zoning of the Property from R.C.2 to R.C.5. The Board of Appeals denied this request.

Petitioner spent considerable sums of money in relying on the Lee's representations concerning the ability to build on the Property. The acquisition price of the Property was in excess of \$34,000.00, a cost clearly anticipating a buildable lot. Further, Petitioner spent thousands of dollars in legal fees, professional fees, surveying expenses and other expenses in attempting to obtain a building permit and securing financing. Without the ability to build on the Property, Petitioner will suffer a severe loss through no fault of his own.

As a result of all of the zoning adverse decisions, the Petitioner, acting on the advice of several zoning office employees, contacted BG&E about acquiring the BG&E Lot and transferring the density unit.

II. ARGUMENT

The Council raises several arguments contrary to the position of Mr. McGee, which will be addressed generally in this section of this Response.

Pervading the Council's Memorandum is a general disdain for the methods employed by Mr. McGee in attempting to remedy the wrong inflicted upon him. What the Council overlooks, however, is that Mr. McGee has pursued the primary alternatives suggested by the Council in its Memorandum and at the hearing on October 21, 1993.

The Council suggests that relief is available to Mr. McGee under Section 22-44 of the Baltimore County Code. That is incorrect. The sellers of the property, Michael Lee and Julie V. Close (now Lee), have filed bankruptcy in the United States Bankruptcy Court for the Central District of Pennsylvania, Case No. 1-9-01691, and the debt is dischargeable. As Thomas Curtis, an originator of the problem being experienced by Mr. McGee, was not the seller of the property to Mr. McGee, Section 22-44 does not authorize an action against him. Accordingly, the relief suggested by the Council on the first page of its Memorandum is not available.

At the hearing, the Council suggested that Mr. McGee join Mr. Curtis in an action before the Zoning Commissioner, in an effort to require Mr. Curtis to transfer a density unit he now possesses on a contiguous piece of property to establish a buildable lot for Mr. McGee. Simply put, the Zoning Commissioner does not have this authority, and so stated at previous hearings. Mr. Curtis was subpoenaed as a witness at the hearing before the County Board of Appeals on August 17, 1990, at which time Mr. Curtis refused to cooperate, and therefore no action could be taken against him.

Therefore, the remedies suggested by the Council, which the Council in its Memorandum implies are ready solutions to Mr. McGee's problem, are simply not available to Mr. McGee. As a result, Mr. McGee is left with an injustice, but he does have a suitable remedy in the form of the relief requested by him in his instant Request for Special Hearing.

The Council also argues that the deed dated April 26, 1973 (inadvertently referred to as 1993 in the Council's Memorandum), conveying the 0.7 acre BG & E Lot, only transferred an easement to establish transmission lines to BG&E. This deed clearly refers to a transfer of the BG & E Lot "in fee simple", which precludes the interpretation placed on the conveyance by the Council. As support, the Council argues that Bessie Curtis retained the right of herself and her heirs to farm and use the same in any other manner. This does not vitiate the fee simple transfer under the deed, but merely reserved said rights pursuant to the deed. As a result of the transfer of the property in fee simple, the Council's argument that a necessary party was not joined (namely, the Estate of Bessie Curtis), is incorrect.

As a result of the April 26, 1973, conveyance, BG&E acquired its interest in the BG & E Lot therein conveyed. The Council next argues that the size alone of the BG & E Lot is insufficient to create the right to build. The Council overlooks the fact that the BG&E Lot, when combined with the McGee Property, is certainly of sufficient size to build, totalling 4.7 acres, more or less. Further, special relief may have been available to the then owner at the time of the conveyance of the BG&E Lot in 1973, through a request for special hearing or special exception. The combination of these factors creates in the Zoning Commissioner the ability to find that the two lots, when combined, carry with it the right to build. This is a matter within the sound discretion of the Zoning Commissioner. Given the historical problems experienced by Mr.

6

McGee, and the fact that these problems are not remediable in the fashion suggested by the Council, the special relief requested by Mr. McGee should be granted.

As a final note, the Council argues that the granting of the relief requested by Mr. McGee will essentially open a Pandora's box for requests by similarly situated landowners. The Council provides no support that any such similar situations exist. Further, even if they do exist, it is unlikely that the extenuating circumstances present in the McGee case also exist in those matters. This type of matter is within of the sound discretion of the Zoning Commissioner.

The Petitioner recognizes the interests of Baltimore County in these types of zoning issues. However, granting Petitioner's request will not infringe on the County's interests and will prevent a severe injustice, economic and otherwise, from being suffered by the Petitioner.

7

III. CONCLUSION

For the foregoing reasons, the Petitioner, Dennis G. McGee, respectfully requests that the relief requested by him in his Request for Special Hearing be granted.

Respectfully submitted,

Hurst R. Hessey
Hurst R. Hessey
Attorney for Petitioner,
Dennis G. McGee
Hessey & Hessey, P.A.
36 South Charles Street
Suite 2400
Baltimore, Maryland 21201
(410) 539-3300

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of November, 1993, a copy of the foregoing Response to Memorandum on Behalf of Valleys Planning Council, Inc. was mailed, postage prepaid, to Douglas G. Worrall, Esquire, Smith, Somerville & Case, 100 Light Street, Sixth Floor, Baltimore, Maryland, 21202-1084, Attorneys for Valleys Planning Council, Inc.

Hurst R. Hessey
Hurst R. Hessey

[F:\WP51\DOC\DTM\MCGEE.RES]

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

January 26, 1995

Douglas Worrall, Esquire
SMITH, SOMMERVILLE & CASE
100 Light Street
Baltimore, MD 21202

RE: Case No. 94-42-SPH
DENNIS R. MCGEE
5th District

Dear Mr. Worrall:

As no further appeals have been taken regarding the subject matter, we have closed the file and returned same to the Office of Zoning Administration and Development Management, along with any exhibits entered in this matter. The Zoning Office maintains the permanent file.

Anyone interested in either the file or the exhibits is advised to contact Gwen Stephens in Zoning Administration at 887-3391 immediately upon receipt of this letter. By copy of this letter, all parties of record that may have an interest in this file have been notified.

Sincerely,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

cc: Hurst R. Hessey, Esquire
Margaret Worrall, Valleys Planning Council
People's Counsel for Baltimore County

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on Recycled Paper

IN RE: PETITION FOR SPECIAL HEARING
W/S Falls Road, 2500' S of
Benson Mill Road
(15906 Falls Road)
5th Election District
3rd Councilmanic District
Dennis G. McGee
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 94-42-SPH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing for that property known as 15906 Falls Road in northern Baltimore County. The Petition was filed by the owner of the property, Dennis G. McGee, through his attorney Hurst R. Hessey, Esquire. The Petitioner seeks approval to combine two lots for the purpose of obtaining a building permit for a single family dwelling. The subject property and adjoining properties are more particularly described on the site plan submitted into evidence as Petitioner's Exhibit 1.

Appearing on behalf of the Petition were Dennis McGee, property owner, and his attorney, Hurst R. Hessey, Esquire. Appearing as a Pro-Testant at the hearing was Margaret Worrall on behalf of the Valleys Planning Council, who was represented by Douglas Worrall, Esquire.

This case raises significant legal issues related to the development of R.C.2-zoned land in Baltimore County. Although the parties are at odds regarding the issues presented, there seems to be little dispute as to the factual history of the subject site. That history is outlined as follows:

Bessie R. Curtis, widow of Levy Curtis, originally owned approximately 14 acres of land in northern Baltimore County. Apparently, Mr. & Mrs. Curtis acquired the tract in 1932. This 14-acre parcel was located

adjacent to Falls Road and was roughly L-shaped. The tract is and has been zoned R.C.2 for some time and is improved with a single family dwelling and several outbuildings. The dwelling is located on the front portion of the property, immediately next to Falls Road.

On or about May 6, 1971, Mrs. Curtis transferred approximately 1.451 acres to her son, Thomas Curtis, and his wife, Dorothy R. Curtis. Ultimately, the younger Mr. Curtis constructed a single family dwelling on that lot. That conveyance reduced Mrs. Curtis' holdings to 12.5 acres, more or less. Thereafter, on or about April 26, 1973, Mrs. Curtis conveyed a second parcel of approximately .7 acres to the Baltimore Gas and Electric Company (BG & E). Apparently, the purpose of this transfer was to provide an area for BG & E to construct a utility tower for the Company's power grid through northern Baltimore County. The significance and legal effect of that transfer is disputed by and between the parties hereto and will be addressed hereinafter in this opinion. Specifically, the Petitioner contends that the conveyance of this .7 acre parcel to BG & E was a fee-simple transfer, whereas the Valleys Planning Council avers that nothing more than an easement was conveyed. In any event, subsequent to these conveyances, Mrs. Curtis was left with approximately 12 acres, unencumbered and in-fee.

As is well-known, Baltimore County adopted the R.C. zoning classification on November 24, 1979. As of the date this parcel was zoned R.C.2, Mrs. Curtis possessed the 12 acres as described above. Mrs. Curtis passed away in February, 1983 and by her Will, divided the 12-acre tract among her three children. On August 17, 1984, the three children filed a Deed in Lieu of Partition in the Land Records of Baltimore County dividing the 12-acre tract into three parcels of approximately 4 acres each. The first parcel located towards the front of the original tract and containing the

original dwelling was conveyed to Mary V. Kohler, a daughter. A second parcel was conveyed to Thomas Curtis which was located to the rear of the original tract, adjacent to the 1.451 acres previously conveyed to him, providing Mr. Curtis with two abutting lots and a combined total of approximately 5.5 acres. The third parcel, also located to the rear of the original tract, was conveyed to Martha Kohler as Trustee for her brother, Harry Curtis. This parcel was subsequently sold to a third party, Michael Lee, et al. Mr. Lee conveyed his interest in the property in 1986 to the present owner and Petitioner, Dennis McGee. It is agreed by the parties that the Petitioner purchased the property with the intention of constructing a single family residence thereon, believing the property constituted a buildable lot. However, no such construction has taken place for the reasons set forth below.

As noted above, the property is zoned R.C.2 and has so been zoned since the adoption of the R.C. zoning classification on November 24, 1979. The R.C. regulations provide that no lot having an area of less than 1 acre can be created in an R.C.2 zone. (See Section 1A01.3.B.2 of the B.C.2.R.). Moreover, as to residential density in an R.C. 2 zone, the regulations provide that any lot having a gross area of between 2 and 100 acres may be subdivided into no more than two (2) lots total. (See Section 1A01.3.B.1 of the B.C.2.R.). In view of these density requirements, a question arose as to the propriety of the subdivision of this 12-acre tract by recordation of the deeds partitioning the property to Mrs. Curtis' three children.

In order to clarify the status of the property, Mr. McGee filed a Petition for Special Hearing in 1989 in Case No. 90-62-SPH. That case was heard by then Deputy Zoning Commissioner, Ann M. Nastarowicz. In her Order dated January 11, 1990, Deputy Zoning Commissioner Nastarowicz noted that

the Petitioner sought special hearing approval of a non-density transfer to an adjoining property owner (Thomas R. Curtis) in order to provide the necessary density unit that would allow him to construct a single family dwelling on the lot he acquired from Mr. Lee. Deputy Zoning Commissioner Nastarowicz held that the division of the property into three lots pursuant to Bessie Curtis' Will constituted an illegal subdivision in violation of Section 1A01.3 of the B.C.2.R. Furthermore, Deputy Zoning Commissioner Nastarowicz noted that the relief requested by the Petitioner involved the property rights of certain individuals, namely, Thomas R. Curtis and Martha V. Kohler, who had not joined in the Petition as co-Petitioners. Specifically, Mr. McGee sought an Order designating Thomas R. Curtis' property (Parcel 2) as a non-density parcel. For this reason, Deputy Zoning Commissioner Nastarowicz denied the relief requested in that "all necessary parties have not joined in the Petition." Unsatisfied with this result, Mr. McGee appealed her decision to the County Board of Appeals. After a de novo hearing, the Board also denied the Petition by its written Order dated August 21, 1990. The Board's opinion noted that "This Board is unable to grant the relief requested by the Petitioner for the same reasons as given by the Deputy Zoning Commissioner below. As was aptly stated by the Deputy Zoning Commissioner, the property rights of other individuals are involved in these proceedings, which individuals have not been joined in the Petition". No appeal was taken from this Order to the Circuit Court for Baltimore County, thus the Board's decision stands as to the issues presented in that case. The conclusion by the Deputy Zoning Commissioner and the County Board of Appeals that the attempted subdivision by Ms. Curtis' Will is illegal is undoubtedly correct. Although Ms. Nastarowicz' opinion and that of the Board did not cite any authority for their conclu-

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sion, said result has been repeatedly reached by several authorities, including the Zoning Commissioner (see Case No. 87-478-SPH), the Circuit Court for Baltimore County (Case No. 88-CG- 1510), and the Office of Law (Opinion issued November 4, 1980).

Obviously, this result distressed Mr. McGee greatly. The uncontradicted testimony and evidence offered on his behalf was that he paid a significant sum for the subject property. Moreover, he clearly purchased the property with the intention of developing same with a single family dwelling. Since the Board denied his Petition, he was left in an unenviable position of having paid a large sum for property which cannot be developed. As the Board's opinion notes, it is clear that the purchase price paid by Mr. McGee for the property evidenced the Petitioner's intent to develop the property as a single family lot, rather than devoting same to farm or agricultural uses, for example.

Following the Board's decision on the Petition for Special Hearing, Mr. McGee tried again with a Petition to reclassify the zoning of the property to R.C. 5. This would provide for an increased number of density units on the site. However, the Board denied this request as well.

Having been frustrated with the result in the prior Petitions outlined above, Mr. McGee now tries a different approach. He now argues that a density unit is attributable to the .7 acre parcel which was transferred to BG & E by Mrs. Curtis in 1973. Thus, he intends on seeking a transfer of that density unit to his 4-acre parcel, thereby permitting a single family dwelling to be constructed thereon.

As noted above, the parties essentially agree as to the zoning and physical history of the tract originally owned by Mrs. Curtis. However, they vehemently disagree about the legal issues presented. The first

- 5 -

issue presented questions the nature of the conveyance of the .7 acre parcel by Mrs. Curtis to BG & E in 1973. Essentially, the Valleys Planning Council (VPC) contends that the conveyance was nothing more than the granting of an easement for utility line use by BG & E. Thus, VPC contends that no .7 acre "lot" was created and that there is no density unit attributable to that lot. Rather, as outlined in their Memorandum of Law, VPC claims that the Estate of Bessie Curtis continues to own the .7 acre parcel, subject to BG & E's easement.

A review of the deed of conveyance for this tract, recorded among the Land Records of Baltimore County at Liber 5355, Page 052, is necessary to resolve this question. This deed was presented into evidence in this case as VPC's Exhibit 1. After reviewing the deed, it is abundantly clear that the conveyance from Bessie Curtis to BG & E was a fee-simple transfer. The clear and unambiguous language of the deed is persuasive. Specifically, the deed states that Mrs. Curtis conveyed the subject .7 acre parcel "unto the said Baltimore Gas and Electric Company, its successors and assigns, in fee simple..." (emphasis added). Elsewhere in the document, a legal description of the .7 acre parcel is provided. However, after the reservation clause, the deed provides that the property will be conveyed "Together with any, all and every the rights, alleys, ways, waters, privileges, appurtenances, and advantages to same belonging or in any wise appertaining." The "to have and to hold" portions of the deed likewise reference the fact that the conveyance is in fee-simple.

Admittedly, Mrs. Curtis did acquire a right to utilize the property. That is, it is provided that she would continue to have the right to farm the property and cross said parcel. However, her interest is obviously the reservation of an easement in a fee-simple conveyance rather than

- 6 -

an easement conveyance as argued by the VPC. I see no evidence in the deed or otherwise that the conveyance to BG & E is anything less than fee-simple, with a reserved easement.

Having therefore determined that Bessie Curtis conveyed a fee-simple interest to BG & E in 1973, the next question presented relates to the density of that .7 acre parcel as of the date of the adoption of the R.C. zoning classification in Baltimore County.

As is well-settled, residential densities and tract boundaries for any given R.C. zoned land were established on the date the R.C. zoning classification was adopted on November 24, 1979. (See Section 103.1 et seq of the B.C.Z.R.) As noted in Deputy Zoning Commissioner Mastarowicz' opinion, the 12-acre tract retained by Mrs. Curtis and subsequently divided into three parcels by her Will has two density units attributable to it. That is, as of November 24, 1979, Bessie Curtis' property consisted of 12 acres. In that it was between 2 and 100 acres in area, it could be subdivided to create two buildable lots. Thus, there are two (2) density units attributable to that parcel. Moreover, the tract conveyed by Ms. Curtis to her son prior to 1979 does not detract from that density. That is, the 1.451 acre lot was established prior to November 24, 1979. So it is with the BG & E parcel. Clearly, the BG & E parcel was also a lot of record as of November 24, 1979. A lot of record is defined in Section 101 of the B.C.Z.R. as "A parcel of land with boundaries as recorded in the Land Records of Baltimore County on the same date as the effective date of the Zoning Regulations which governs the use, subdivision, or other condition thereof." Clearly, by the deed conveying the property from Mrs. Curtis to BG & E in 1973, a legal description establishing its boundaries was recorded in the Land Records of Baltimore County prior to November 24, 1979.

- 7 -

Thus, there can be no doubt that the BG & E property is a lot of record. Having established that the BG & E property is a lot of record, it follows that there is one density unit attributable to that lot.

The Valleys Planning Council claims that this cannot be so in view of the language of Section 1A01.3.B.2 of the B.C.Z.R. which provides that "a lot having an area of less than 1 acre may not be created in an R.C.2 zone." Although I am appreciative of this language, I believe the operative word within that Section is "created". This Section prohibits a subdivision of R.C. 2 zoned land which would create a lot of less than 1 acre in area. This lot was not zoned R.C. 2 when it was subdivided. Rather, the subdivision occurred prior to the R.C.2 designation. Thus, the fact that this lot of record, which was duly established in the Land Records of Baltimore County prior to November 24, 1979, is less than 1 acre is not significant as it relates to density.

Having established that the BG & E property is a lot of record, attention is next turned to what, if any, density is attributable to it. A basic premise of VPC's opposition to the subject Petition is centered upon the concept of density. Specifically, VPC contends that there is no density attributable to property in R.C. zones, and thus, it cannot be transferred.

Surely, density is a concept provided for in the B.C.Z.R. Density is a subject referenced within the regulations governing the development of parcels zoned D.R. In fact, the D.R. designation means "Density-Residential" (emphasis added). Moreover, Section 1B01.2 of the B.C.Z.R. governs general density and provides for the clustering of density units within a given tract.

- 8 -

Although the R.C. zoning regulations do not use the word "density" nor contain language akin to Section 1B01.2, the concept of density is still applicable. The difference between the D.R. and R.C. zoning classifications accounts for the absence of specific references to density in the R.C. regulations. By its very purpose, D.R. zones are geared to providing areas for housing and different types of dwellings. R.C. property, on the other hand, is intended to be utilized to foster agricultural uses. Moreover, by their very nature, farms and agricultural properties almost always are comprised of a principal dwelling and several outbuildings, i.e., barns, sheds, etc. Thus, whereas the D.R. zones speak of residential dwellings and densities, the R.C. zones provide for principal dwellings on minimum sized parcels and rights of subdivision.

Applying the R.C. regulations to this case, one must conclude that the BG & E lot contains one (1) density unit. Section 1A01.3.B.1 of the B.C.Z.R. provides that any lot having between 2 and 100 acres of gross area may be subdivided one time to create two (2) lots. Thus, the density available to any lot between 2 and 100 acres in size would allow two (2) new lots, each containing its own principal dwelling. That Section also provides that any lot less than 2 acres in size, zoned R.C. 2, cannot be subdivided. It logically follows that this means that the R.C. 2 lots less than 2 acres in size have the density for one dwelling unit thereon. In that the BG & E tract is less than 2 acres in size, it may not be subdivided; however, it does have one (1) density unit attributable to it.

VPC also claims that Section 304 of the Regulations would prohibit the BG & E parcel from possessing any density. Specifically, Section 304 governs the use of undersized lots to support single family dwellings. The Section provides that undersized lots with insufficient area and/or

- 9 -

width may nonetheless be utilized to support single family dwellings when a three-pronged test is satisfied. Essentially, that test requires that the lot be duly recorded in the Land Records of Baltimore County prior to 1955, comply with all other height and area regulations, and that the lot owner does not own adjoining land. In that the subject lot owned by BG & E does not meet these tests, VPC argues that it has no density.

The response to this argument is simple. Section 304 regulates the use of undersized lots for construction of dwellings thereon. It does not relate to or regulate density. The Petitioner does not propose to build anything on the BG & E lot. The lot will not be used to support any construction. Thus, that Section is inapplicable.

Having determined that the BG & E property is a lot of record and has one density unit attributable to it, the next question presented is whether it can be transferred to Mr. McGee's property. As acknowledged by VPC within their Memorandum, density transfers have been permitted by this Office in the past. Nonetheless, VPC claims that they are illegal under the regulations.

In Case No. 92-316-SPH, this Zoning Commissioner granted a Petition for Special Hearing allowing the transfer of density from one tract to another on property split-zoned R.C. 2 and R.C. 4. In Case No. 93-382-SPH, a reconfiguration of lot lines and the establishment of density attributable to each lot was allowed on a tract zoned R.C. 2. There have also been other instances before this Zoning Commissioner of density transfers in R.C. 2 zoned lots.

One case which addressed this matter was the case of Steven H. Gudeman, et al, vs. People's Counsel (Zoning Case No. 88-490-SPH; Circuit Court Case No. 89-CG-911; and Court of Special Appeals Case No. 396, Sept.

- 10 -

Term, 1990, Unreported Opinion filed January 22, 1991). In that case, then Deputy Zoning Commissioner Ann M. Mastarowicz granted a Petition for Special Hearing approving the realignment of two parcels of land zoned R.C. 2, allowing the transfer of said density. On appeal, the County Board of Appeals denied the Petition for reasons related to whether the parcel was one tract or two, based upon the location of a road which bisected the property. The case was then appealed to the Circuit Court. By her decision, Judge Barbara K. Howe affirmed the Board's ruling. Although noting that the "road issue" was dispositive, Judge Howe observed that, despite a long, steady practice, "there is nothing in the statutes to allow transfers of density from one parcel to another." In an unreported opinion, the Court of Special Appeals labeled this transfer of density question as a non-issue, and declined to rule on the matter as moot.

With all due deference to Judge Howe, this Zoning Commissioner finds that the transfer of density is permissible pursuant to Section 500.7 of the B.C.Z.R. Therein, the Zoning Commissioner is given broad authority to conduct such hearings as may be necessary to enforce and interpret the zoning regulations of Baltimore County. Under the cloak of authority provided by this regulation, I find that I may approve such density transfers, if same are consistent with the spirit and expressed purposes of the R.C. zoning classification and regulations. Thus, BG & E might transfer density to Mr. McGee.

Having resolved all of these issues, the ultimate question is presented: Can the density attributable to the BG & E property be transferred to the Petitioner's site. Sadly, for the Petitioner, the answer must be in the negative. As with the first case, he has made the same mistake and neglected to include a necessary party.

- 11 -

For reasons that were made abundantly clear in Deputy Zoning Commissioner Mastarowicz' Order, and corroborated by the County Board of Appeals, the transfer cannot be approved in this case because of the lack of a necessary party. In the prior case, Mr. Curtis was not joined as a co-Petitioner and his absence as such doomed the request by Mr. McGee. In the instant case, BG & E is not a party hereto. For this reason, therefore, this Petition cannot be approved. The transfer of any density from the BG & E tract to Mr. McGee would obviously affect the rights of that property owner and can only be considered if the Petition is joined by that party. There may very well be issues raised by that property owner which must be considered. Whether there are indeed such issues is unknown. Thus, the relief requested herein must be denied.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth above, the relief requested in the special hearing shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 5th day of March, 1994 that the Petition for Special Hearing seeking approval to combine two lots for the purpose of obtaining a building permit for a single family dwelling, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

- 12 -

BALTIMORE COUNTY, MARYLAND
Inter-office Correspondence

TO: Memo to the file

DATE: October 21, 1993

FROM: Lawrence E. Schmidt
Zoning CommissionerSUBJECT: Case No. 94-42-SPH
Dennis McGee

This case presents a number of difficult legal issues. It involves the effects of an illegal subdivision and a request by the Petitioner for a density transfer to create a buildable lot. Hurst R. Hessey, Esquire represents the Petitioner. Douglas Worrall represents Valleys Planning Council. Mr. Worrall submitted a trial memorandum and I gave Mr. Hessey 15 days from October 21, 1993 to respond. Worrall also submitted a copy of several relevant deeds as well as prior opinions of this office. The case appears to be difficult to decide. Worrall raises a number of issues. I should be reminded to refer to the legal opinion of County Attorney Jacobson to Zoning Commissioner Hammond which is in my research drawer. That may help in deciding this case. Also, I believe I originally obtained from Carl Richards when I considered another density transfer case which I cannot remember.....maybe I can track that down. At this point, I intend to agree with Worrall that at least preliminarily Hessey has failed to join all of the parties in requesting the transfer. It is unclear and disputed as to who owns the .78 acres from where the density transfer would come. However, whether it is owned by B.G. & E. (as alleged by Hessey) or the estate of Bessie Curtis (as alleged by Worrall) neither of those are parties to the Petition. That is, the only party to the Petition is the contract purchaser (Dennis McGee). Worrall's argument on Section 304 is irrelevant unless McGee intends to build on the .78 acres. I think that can be easily dealt with and dismissed in that fashion. Also, he appears to be making this a test case on density transfers and RC 2 zones ----perhaps talking to Carl and Arnold might help with some background on that. The rest of the case will have to be decided by looking at the deeds closely to determine exactly what was transferred to BG&E, (easement vs. in fee).

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County Council of Baltimore County
Maryland

Legislative Session 1970, Legislative Day No. 11

BILL NO. 100

Introduced by Mr. Bartenfelder, Councilman
(Request of County Executive)

By the County Council, July 6, 1970.

A BILL

Entitled

AN ACT to amend the Baltimore County Zoning Regulations to provide certain new regulations and to revise certain existing regulations for establishment of zoning classifications, conversion and redesignation of "Residence" zoning classifications, to provide for the application of light manufacturing zoning regulations to areas covered by previously submitted subdivision plans; to establish Rural and Rural-Suburban zoning classifications, "Residential" (R.R.) zoning classifications and Elevator-Residential (R.R.) zoning classifications; to amend the special Apartment-Residence Zoning Classification; to amend the special Zoning for Community-Care (Commercial) (C.C.C.) Districts; to revise the use regulations in Light Manufacturing (M.L.) Zone; to revise the regulations governing automotive service stations in permitted parking garages; to establish regulations for Unit Developments and the classifications and authorizations thereof; to provide for the continuing validity of special exceptions granted for elevator apartment buildings or office buildings under R.A. Zoning Classifications; to provide that the Planning Board may adopt and implement certain policies and procedures in furtherance of the Zoning Regulations; by repealing and re-enacting with amendments Subparagraph 100.1.A.2, by adding new with amendments Subparagraph 100.1.A.2, by adding new Subsection 100.3A, by deleting and adding certain definitions to Section 101, entitled "Definitions", by amending Subsection 100.1.A.2, by adding new Articles 1A and 1B, by repealing designation and title, "Article 2-Zones and Districts: Use, Height and Area Regulations" and the subtitle, "R.A. Zone-Residence, One-Family" and enacting in lieu thereof a new designation and title as follows:

County Council of Baltimore County
Maryland

Legislative Session 1975, Legislative Day No. 21

BILL NO. 98-75

Introduced by Mr. Huddles, Councilman

By the County Council, October 6, 1976.

A BILL

Entitled

AN ACT to amend the Baltimore County Zoning Regulations to establish four new zoning classifications intended to insure the preservation of Baltimore County's Natural Resources, by repealing subparagraph 100.1.A.2 of Section 100 of the Zoning Regulations of Baltimore County and enacting a new subparagraph 100.1.A.2 in lieu thereof; by adding certain new definitions to Section 101 of said regulations; by adding new subsection 103.3 to Section 103 of said regulations; and by repealing Article 1A, and Sections 1A00 and 1A01 thereunder, of said regulations and enacting new sections 1A00 through 1A01, under new Article 1A entitled "Resource-Conservation Zones", in lieu thereof.

WHEREAS, THE COUNTY COUNCIL HAS CONSIDERED THE FINAL REPORT OF THE PLANNING BOARD, ENTITLED PROPOSED ZONING AMENDMENTS: ZONING CLASSIFICATIONS FOR RESOURCE CONSERVATION, IN ACCORDANCE WITH SECTIONS 22-20 AND 22-21 OF THE BALTIMORE COUNTY CODE (1974 SUPPLEMENT); AND,

WHEREAS, THE COUNTY COUNCIL HAS CONSIDERED TESTIMONY AT THE PUBLIC HEARING HELD IN ACCORDANCE WITH SECTION 22-21 OF THE BALTIMORE COUNTY CODE (1974 SUPPLEMENT); AND,

WHEREAS, THE COUNTY COUNCIL HAS REVIEWED IN WORK SESSION AND LEGISLATIVE SESSION THE PLANNING BASIS OF THE FINAL REPORT AS ELABORATED BY THE STAFF OF THE OFFICE OF PLANNING AND ZONING OF BALTIMORE COUNTY; AND,

WHEREAS, THE COUNTY COUNCIL HAS CONSIDERED THE COMPREHENSIVE PLAN FOR BALTIMORE COUNTY APPROVED BY THE PLANNING BOARD OCTOBER 13, 1976.

1A01.3---HEIGHT AND AREA REGULATIONS [Bill No. 98-75]

A. Height regulation. No structure hereafter erected in an R.C. 2 zone shall exceed a height of 35 feet, except as otherwise provided under Section 300. [Bill No. 98-75]

B. Area regulations. [Bill No. 178-79]

1. Subdivision lot density. No lot of record lying within an R.C. 2 zone and having a gross area of less than 2 acres may be subdivided. No such lot having a gross area between 2 and 100 acres may be subdivided into more than 2 lots (total), and such a lot having a gross area of more than 100 acres may be subdivided only at the rate of 1 lot for each 50 acres of gross area. In cases where land in single ownership is crossed by existing or proposed roads, rights-of-way, or easements, the portions of land on either side of the road, right-of-way, or easement shall not be considered separate parcels for the purpose of calculating the number of lots of record with the exception that any zoning petition site plan, subdivision plan or record plat filed with or approved by the county between November 27, 1979 and October 1, 1990 shall not be so affected and be considered valid, provided as to any zoning petition pending on appeal, that it be upheld on appeal. [Bill No. 178-79; Bill No. 199-1990]

2. Lot size. A lot having an area less than 1 acre may not be created in an R.C. 2 zone. [Bill No. 178-79]

3. Setback requirements. No principal structure or dwelling (whether or not it is a principal structure) in an R.C. 2 zone may be situated within 75 feet of the centerline of any street or within 35 feet of any lot line other than a street line. [Bill No. 178-79]

4. Principal dwellings per lot. No more than 1 principal dwelling is permitted on any lot in an R.C. 2 zone. [Bill No. 178-79]

1A01.4---MARYLAND AGRICULTURAL LAND PRESERVATION PROGRAM

The use or development of land in an agricultural district established in accordance with Section 2-509 of the agricultural article of the Annotated Code of Maryland, 1974, 1979 Cumulative Supplement, shall be governed by agricultural land preservation provisions

REV 8/93

1A-10

BALTIMORE OFFICE
JAMES E. HESSEY, P.A.
ATTORNEYS AT LAW
100 LIGHT STREET
BALTIMORE, MARYLAND 21201-1084
TELEPHONE (410) 727-1084
FAX (410) 388-8080

SMITH, SOMERVILLE & CASE
ATTORNEYS AT LAW
100 LIGHT STREET
BALTIMORE, MARYLAND 21201-1084
TELEPHONE (410) 727-1084
FAX (410) 388-8080

WASHINGTON OFFICE
1000 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
TELEPHONE (202) 833-1841
FAX (202) 833-8888

MARCH 31, 1994

Director of Planning
Zoning Administration and Development Management
Room 109
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: PETITION FOR SPECIAL HEARING W/S Falls Road, 2500'±
of the c/l of Benson Mill Road (15906 Falls Road)
5th Election District - 3rd Councilmanic District
Case No. 94-42-SPH

NOTICE OF APPEAL

Dear Sir:

Notice is hereby given on behalf of Valleys Planning Council, Inc., P.O. Box 5402, Towson, MD 21285-5402, of its appeal from the decision of the Zoning Commissioner for Baltimore County, dated March 3, 1994, in the above-captioned case. Notice is further given that Phillip W. Worrall, 3116 Black Rock Road, Glyndon, MD 21071, and George D. Mathias, Benson Mill Road, Upperco, MD 21155, intervene in the appeal as interested parties.

Very truly yours,
Douglas G. Worrall

DGW/jlk

cc: Hurst R. Hessey, Esquire

4/1/94

HESSEY & HESSEY, P.A.
ATTORNEYS AT LAW
24001 HARBOR CENTER SOUTH
100 SOUTH HARBOR STREET
BALTIMORE, MARYLAND 21201-3010
TELEPHONE (410) 518-1300
FAX (410) 518-1300

November 5, 1993

Mr. Lawrence Schmidt,
Zoning Commissioner
Zoning Administration
and Development Management
111 Chesapeake Avenue
Room 109
Towson, Maryland 21204

Re: Petitioner: Dennis G. McGee
Case No.: 94-42-SPH

Dear Mr. Schmidt:

Enclosed please find for filing Petitioner's Response to Memorandum on Behalf of Valleys Planning Council, Inc.

Thank you for your assistance.

Sincerely,

Hurst R. Hessey

HRH:da
encl.
cc: Mr. Dennis McGee (w/encls.)
Douglas G. Worrall, Esquire (w/encls.)
[F:\WP51\DOCS\94\940401\93\9305\930505\930505.DOC]

RECEIVED
NOV 9 1993
ZADM

HESSEY & HESSEY, P.A.
ATTORNEYS AT LAW
24001 HARBOR CENTER SOUTH
100 SOUTH HARBOR STREET
BALTIMORE, MARYLAND 21201-3010
TELEPHONE (410) 518-1300
FAX (410) 518-1300

February 7, 1994

Mr. Lawrence Schmidt, Zoning
Commissioner
111 Chesapeake Avenue
Room 109
Towson, Maryland 21204

Dear Mr. Schmidt:

Re: Petitioner: Dennis G. McGee
Case No.: 94-42-SPH

The captioned matter came up for a hearing before you on October 21, 1993. At that time, the Valleys Planning Council, Inc., submitted a Memorandum of Law. You gave Mr. McGee the opportunity to file a responsive Memorandum, which he filed on November 5.

As we have not yet received a decision from your office, I am writing to ask whether you need any further information or documentation from the Petitioner in this matter to reach a decision.

Thank you for your assistance in this matter.

Sincerely,

Hurst R. Hessey

HRH/hh
cc: Mr. Dennis G. McGee
Douglas G. Worrall, Esquire
[F:\WP51\DOCS\94\940401\93\9305\930505\930505.DOC]

RECEIVED
FEB 9 1994
ZADM

H.O. 43
This was discussed between Hunt
Hessey & Our Office was necessary to
resolve this issue. I was not involved
& therefore am not familiar with the background
issues.

7/28/93

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME ADDRESS
DENNIS MCGEE 3728 BALLHAWK RD

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME ADDRESS
Margaret Worrall Valleys Planning Council
P.O. Box 5402
Towson, Md. 21285-5402
Douglas Worrall South Severn & Case
100 Light St.
Baltimore 21202

IN THE MATTER OF THE APPLICATION OF DENNIS G. MCGEE FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE WEST SIDE OF FALLS ROAD, 2500' SOUTH OF THE CENTERLINE OF BENSON MILL ROAD (15906 FALLS ROAD) 5TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT

OPINION

This is an appeal from the decision of the Deputy Zoning Commissioner's Order dated January 11, 1990 wherein Petitioner's Special Hearing request was denied. Specifically, the Petitioner is requesting non-density transfer of 4.00 acres to an adjoining property owner and to establish not more than two (2) lots from a 12.00 acre parcel in an RC-2 zone. The appeal to this Board is de novo. This decision is based upon the evidence and testimony presented to this Board including the stipulation of facts, proffers of testimony made by the Appellant and exhibits filed herein.

The Appellant appeared and testified in these proceedings represented by Counsel, Hurst R. Hessey, Esquire. Petitioner also produced the testimony of Michael B. Dallas, a registered surveyor, who offered the plat of the subject property into evidence as Petitioner's Exhibit No. 1. Deputy People's Counsel, Peter Max Zimmerman, Esquire, also participated in these proceedings and offered the testimony of Wallace S. Lippincott, Jr., Community Planner with the Office of Planning and Zoning.

The subject property is known as 15906 Falls Road and consists of part of a 12-acre tract presently zoned RC-2 located off of



County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

November 14, 1991

Hurst R. Hessey, Esquire
36 S. Charles Street
Suite 2400
Baltimore, MD 21201

RE: Case No. R-91-363
Dennis McGee

Dear Mr. Hessey:

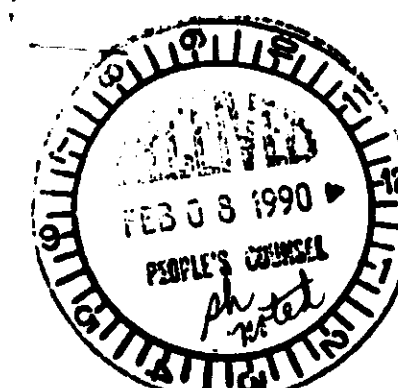
Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Sincerely,

Kathleen C. Weidenhammer
Administrative Assistant

encl.

cc: Mr. Dennis McGee
c/o Hurst R. Hessey, Esq.
Mr. James Earl Kraft
People's Counsel for Baltimore County
P. David Fields
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director of
Zoning Administration



IN THE MATTER OF THE APPLICATION OF STEVEN H. GUDEMAN, ET UX FOR A PETITION FOR SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTH SIDE OF STOCKTON ROAD STEVEN H. GUDEMAN AND BETTY J. GUDEMAN APPELLANTS AND THE PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

OPINION AND ORDER

This matter came before the court from a decision of the Board of Appeals of Baltimore County dated February 16, 1989 which reversed the Deputy Zoning Commissioner and found that the existence of a public road did not create two parcels on the land in question and that these land areas must be considered as one R.C. 2 parcel.



County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

July 20, 1994

Mark P. Hanley, Jr., Esquire
206 Washington Avenue
P.O. Box 5506
Towson, MD 21204

RE: Case No. 94-139-SPH
The Estate of Rita S. Holland
/Elizabeth Hendrickson, P.R.

Dear Mr. Hanley:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter. Also enclosed is a copy of the Dissenting Opinion of William T. Hackett.

Very truly yours,
Kathleen C. Weidenhammer
Administrative Assistant

encl.

cc: Mr. George S. Beck
Paul A. Harper, Esquire
Ms. Elizabeth Hendrickson
Mr. George R. Beck
Ms. Rosemary Gomez
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director/ZADM

IN THE MATTER OF THE APPLICATION OF STEVEN H. GUDEMAN, ET UX FOR A PETITION FOR SPECIAL HEARING ON THE PROPERTY LOCATED ON THE SOUTH SIDE OF STOCKTON ROAD, SOUTH WEST CORNER CARROLL MILL ROAD, 2200 STOCKTON ROAD 10TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT

OPINION

This case comes before the Board on appeal from an Order of the Deputy Zoning Commissioner granting the Petition for a Special Hearing to approve the transfer of density on the subject site. The case was heard this day in its entirety.

The Petitioner presented as his first witness David Ransome, a land surveyor. He testified that he prepared the plat for the original Hearing and the plat with the most recent revisions entered as Petitioner's Exhibit No. 1 in this Hearing. He testified that the property is classified RC 2 and RC 4. He further described the development that has occurred in the general area i.e. Stockton Woods, Hickory Hill, Brookfield and Coopersfield. On cross-examination, he testified that as far as the deed indicates this is just one parcel. It was his contention that the creation of Stockton Road bisecting the property separated this as two parcels each with a permitted density of two residential units. The Petitioner next presented Steven Piper, a local farmer, who testified that he farms a total of 2,160 acres in this area and that he has leased this site to farm in 1988. It was his testimony that the density transfer proposed will keep the farm area in one parcel and would be proper. Robert E. Carney, an attorney who works as a Title Examiner, testified as to the deed searches he had conducted. He especially noted the August 15, 1899 deed which conveyed to the County

Application No. M-62068 Parcel 34
ZIC:ed

THIS DEED, Made this 26th day of August, 1991, in the year one thousand nine hundred and ninety-one, by and between MARIE VIRGINIA ROHLER, party of the first part, and BANKERS TRUST COMPANY, a corporation of the State of New York, Trustee, party of the second part, and BALTIMORE C'S AND ELECTRIC COMPANY, a corporation of the State of Maryland, party of the third part.

WHEREAS, the said party of the third part, by its original indenture dated February 1, 1919, and recorded among the Mortgage Records of Baltimore County in Liber V.P.C. No. 555, folio 1, etc., and supplemental indenture thereto, conveyed to the said party of the second part, Trustee, for the uses and purposes therein set forth, all the property of the said Baltimore Gas and Electric Company then owned or hereafter to be acquired by it; and

WHEREAS, in order to vest the title to the property hereinafter described in the said party of the second part, as Trustee under said original indenture dated February 1, 1919, and indentures supplemental thereto, it is now proposed to grant and convey the property hereinafter described directly to the said party of the second part, as such Trustee, and to the said party of the third part, subject, in all respects, to the right, title and interest of the said party of the second part, as such Trustee.

NOW, THEREFORE, THIS DEED WITNESSETH: That in consideration of the premises and the sum of Five (\$5.00) Dollars, and other valuable considerations, this day paid, receipt whereof is hereby acknowledged, the said party of the first part does hereby grant and convey unto the said Bankers Trust Company, Trustee under the aforesaid original indenture dated February 1, 1919, and indentures supplemental thereto, and its successors in said trust, for the uses and purposes and upon the trusts in said indentured set forth and subject to the interest and estate so vested in Bankers Trust Company, Trustee, unto the said Baltimore Gas and Electric Company, its successors and assigns, in fee simple, all the parcel of land situated in the Fifth Election District of Baltimore County, State of Maryland, and described as follows:

THIS DEED, Made this 4th day of February, 1992, in the year one thousand nine hundred and ninety-two, by and between MARIE VIRGINIA ROHLER, Personal Representative of the Estate of Marie Alma Curtis, deceased, party of the first part; and MARIE VIRGINIA ROHLER, THOMAS ROBERT CURTIS and LARRY LEVI CURTIS, parties of the second part.

WHEREAS, by Deed dated March 15, 1932, the property hereinafter described was granted and conveyed by William H. Hecox, deceased, unto Levi T. Curtis and Marie A. Curtis (also sometimes known as Marie Alma Curtis), his wife, and which deed is recorded among the Land Records of Baltimore County, Maryland, in Liber L.M.C.R. No. 899, folio 75, and

WHEREAS, the said Levi T. Curtis departed this life on or about June 18, 1961, survived by his widow, Marie Alma Curtis, and the latter departed this life on or about November 7, 1981, leaving a Last Will and Testament filed of record in the Orphans' Court of Baltimore County in Estate No. 11845 and in which Estate the said Marie Virginia Rohler was appointed Personal Representative on February 25, 1983; and

WHEREAS, by First and Final Administration Account filed in the aforesaid Estate the property hereinafter described was distributed by the said Marie Virginia Rohler, Personal Representative unto the parties of the second part; and

NOW, THEREFORE, WITNESSETH: That in consideration of the premises and other good and valuable consideration (the actual monetary consideration being none), the receipt whereof is hereby acknowledged, the said Marie Virginia Rohler, Personal Representative of the Estate of Marie Alma Curtis, deceased, pursuant to the power and authority vested in her pursuant to the Statute and Trust Article of the Annotated Code of Maryland and in furtherance of the First and Final Administration Account filed in the said Estate, does grant and convey unto Marie Virginia Rohler, Thomas Robert Curtis and Larry Levi Curtis, their personal representatives and assigns, all that parcel of ground situated, lying and being in the Fifth Election District of Baltimore County, State of Maryland, and described as follows, that is to say:

FOR DESCRIPTION SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

TRANSFER TAX NOT REQUIRED

RECORDED IN THE CLERK'S OFFICE OF BALTIMORE COUNTY, MARYLAND
DATE OF RECORDING: 1992 FEB 10
CLERK: [Signature]



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

July 21, 1994

NOTICE OF DELIBERATION

The County Board of Appeals has scheduled the following date and time for deliberation in the matter of:

DENNIS G. MCGEE - PETITIONER
CASE NO. 94-42-SPH

DATE AND TIME : Wednesday, September 7, 1994 at 9:00 a.m.
LOCATION : Room 48, Basement, Old Courthouse

cc: People's Counsel for Baltimore County
Douglas Worrall, Esquire
Valleys Planning Council
Hurst R. Hessey, Esquire
Pat Keller
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

Appellant
Counsel for Appellants /Protestants
Appellants /Protestants
Counsel for Petitioner
Kathleen C. Weidenhammer
Administrative Assistant

Printed with Soybean Ink
on Recycled Paper

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Dennis G. McGee - Petitioner
Case No. 94-42-SPH
DATE : September 7, 1994 @ 9:00 a.m.
BOARD /PANEL : William T. Hackett (WTH)
S. Diane Levero (SDL)
C. William Clark (CWC)
SECRETARY : Kathleen C. Weidenhammer
Administrative Assistant

PURPOSE --to deliberate issues and matter of petition for special hearing presented to the Board; testimony and evidence taken at hearing on July 21, 1994. Written Opinion and Order to be issued by the Board.

Opening comments by Chairman Hackett as to case name and number, and issues to be deliberated in this matter; inability to discuss any portion of case with other Board members prior to today.

WTH: Began by reviewing testimony and evidence with understanding that, after listening to other two members, may change his mind; was troubled by this case; reviewed background of property, zoning (past and present), and particularly the specific years in which the property was divided and/or sold and in what acreage this was done. Presumably, Petitioner paid considerable sum of money for 4-acre parcel; property has been perked; has well. Referred to density permitted by BCZR; noted BG&E's lack of attendance at both the hearing before the Board and before the Zoning Commissioner; believes that Petitioner should be granted special hearing, acquired by density unit that existed in 1970's on BG&E property, and should be allowed to build house.

Summary: Petition for Special Hearing to permit construction of house by Petitioner should be granted.

CWC: Referred to prepared notes; facts were undisputed; application of law to the facts creates problem. Would confer with Chairman regarding facts up to and including finding that conveyance of lot to BG&E is in fee simple absolute; sees nothing in evidence or otherwise that this was anything less than fee simple with reserved easement; referred to

Deliberation /Dennis McGee -Petitioner 94-42-SPH

restrictive covenants at time of conveyance to BG&E by Curtis; clear from deed that parties discussed and resolved whether BG&E could build on transferred lot; express provisions of deed indicated restriction. Also reviewed RC 2 legislation /density; references only development rights, not density; this Board must apply existing zoning law, unless development rights have become vested. There is no vested right in zoning until construction is begun; in prior case before the Board, it was concluded that the Board could not grant relief requested; no appeal taken from Board's final order in that case; would deny special hearing and relief requested.

Summary: Would deny Petition for Special Hearing.

SDL: Has considered arguments as to whether deed for conveying .7 acre lot conveys density; could find no flaws in Zoning Commissioner's reasoning; reviewed conveyance of property to BG&E /fee simple conveyance with easement. Referenced BCZR and zoning law existing at time of conveyance, as well as existing zoning on property and applicability to this case; believes that special hearing should be denied.

Summary: That Petition should be denied.

At this point, Board members discussed among themselves their various views in this matter; both CWC and SDL agreed that Petition should be denied because of lack of necessary parties; WTH expressed concern with approval given to minor subdivisions such as this; CWC reviewed plan with WTH and zoning as it exists now /what applies to this land.

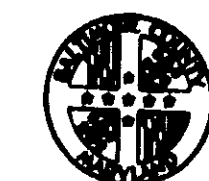
Final decision of Board: that Petition for Special Hearing is denied; CWC would right Opinion/Order for review and signature. WTH to dissent.

Note: appellate period runs from date of written Opinion and Order and not from today's date.

Respectfully submitted,

Kathleen C. Weidenhammer
Administrative Assistant

2



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL
Room 47, Old Courthouse
400 Washington Ave.
Towson, MD 21204
(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel
HAND DELIVERED

Arnold Jablon, Director
Zoning Administration and
Development Management Office
111 W. Chesapeake Avenue
Towson, MD 21204

Re: PETITION FOR SPECIAL HEARING
W/S Falls Road, 2500' S of Benson Mill Rd.
15906 Falls Road
5th Election District - 3rd Councilmanic District
Dennis G. McGee, Petitioner
Case No: 94-42-SPH

Dear Mr. Jablon:

Please enter the appeal of the People's Counsel for Baltimore County to the County Board of Appeals from the order of the Baltimore County Zoning Commissioner in the above entitled case dated March 3, 1994.

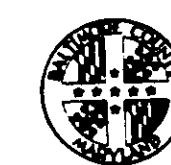
In this connection, please forward to this office copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours,

Peter Max Zimmerman
People's Counsel for Baltimore County

cc: Hurst R. Hessey, Esquire
Douglas Worrall, Esquire
Ms. Margaret Worrall

3/3/94
ZONING OFFICE



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

August 9, 1994

Peter Max Zimmerman
People's Counsel for Baltimore County
Room 47, Old Courthouse
400 Washington Avenue
Towson, MD 21204

Hurst R. Hessey, Esquire
36 S. Charles Street
Suite 2400
Baltimore, MD 21201
Douglas Worrall, Esquire
SMITH, SOMMERVILLE & CASE
100 Light Street
Baltimore, MD 21202

Re: Case No. 94-42-SPH
Dennis G. McGee

Dear Counsel:

The Board has received from Mr. Zimmerman a letter dated July 27, 1994 with attached copies of two Baltimore County Council Bills. Mr. Zimmerman's letter indicates that courtesy copies were sent to other counsel, and we assume this to be the case.

At the hearing, excerpts of the Baltimore County Zoning Regulations as they existed in 1970 were offered by People's Counsel. People's Counsel now asks the Board to consider the entire content of the County Council Bill establishing those changes, as well as the entire content of the second Baltimore County Council Bill enclosed with his letter.

In an abundance of caution, we believe that the record should be reopened to admit these two documents as exhibits, and expect to do so prior to the public deliberation on the date that public deliberation is scheduled (September 7, 1994). However, we wanted to afford the parties an opportunity to make whatever, if any, objections they have to that procedure or to the admission of these two documents prior to our deliberation.

Very truly yours,

William T. Hackett
William T. Hackett, Chairman
County Board of Appeals

WTH/CWC/kcv

encl.

Printed with Soybean Ink
on Recycled Paper



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL
Room 47, Old Courthouse
400 Washington Ave.
Towson, MD 21204
(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILLO
Deputy People's Counsel

July 27, 1994

Mr. William T. Hackett, Chairman
Mr. William Clark
Ms. Diane Levero
Board of Appeals of Baltimore County
Room 49 Courthouse
400 Washington Avenue
Towson, MD 21204

Re: Dennis G. McGee
Petition for Special Hearing
15906 Falls Road
W/S Falls Road, 2500' S of
Benson Mill Road, 5th Election
District, 3rd Councilmanic
Case No. 94-42-SPH

Dear Chairman Hackett, Mr. Clark, and Ms. Levero:

After the hearing of July 21, 1994, it occurred to me that it would be well to put on paper the chronology of the legislation relevant to the rural zones.

In 1970, Bill #100 established two (2) rural zones. The zone most commonly mapped in the rural areas was known as the R.D.P. (Rural: Deferred Planning) classification. See Section 1A00 Baltimore County Zoning Regulations. We submitted at the hearing excerpts of the 1970 Baltimore County Zoning Regulations, including 1A00.3. This is the area regulation which established a minimum lot area of one (1) acre.

Bill #100 also created a classification known as R.S.C. (Rural-Suburban: Conservation). See Section 1A01.1 This classification also had a minimum lot area of one (1) acre. See BCZR 1A01.3.

Bill #100 thus established these two (2) rural zoning classifications and they were found in Article 1A. Bill #100 is 74 pages long in its bill form. To give the Board a sense of R.D.P. and R.S.C. zones, we enclose the first 15 pages of Bill #100. This has the entire section on the rural zones, as well as the introductory sections of the legislation.

Mr. William T. Hackett, Chairman
Mr. William Clark
Ms. Diane Levero
Board of Appeals of Baltimore County
July 27, 1994
Page Two

In 1975, Bill #98 amended dramatically the rural zone system and created the R.C. zones which we still have today. The new agricultural zone, the R.C. 2 zone, established a density system based on the lot of record at the time of the effective date of the law. The sliding scale is shown in full at pages 13 to 15 of the bill, which is enclosed. For lots between 20 and 100 acres, the maximum density was 0.2. For smaller lots the maximum density was higher, and for larger lots the density became lower at the margin. The classification also had a minimum lot size of two (2) acres.

In 1979, Bill #178 substantially tightened BCZR 1A01.3. A copy of the present Section is enclosed. Now lots of record between 2 and 100 acres have a maximum density of two (2) lots, larger lots may be subdivided at a rate of one (1) lot for each 50 acres. The minimum acreage necessary for subdivision remains two (2) acres. Moreover, the law provided that no lot having an area less than one (1) acre could be created. There has been no amendment to the essential density provisions since 1979. The law was amended to include a clarification or refinement in Bill #199-90. This provided that the existence of a road or right-of-way through a lot of record would not be considered as creating separate lots of record on either side of the road for the purpose of density calculations.

To summarize, since 1970, the framework for calculating density in rural zones has been the lot of record. The minimum lot size went from one (1) acre in 1970 (R.D.P. and R.S.C.) to two (2) acres in 1975 (R.C. 2), and back to one (1) acre in 1979 (again R.C. 2).

The property at issue in this case is, of course, zoned R.C. 2. There does not appear to be any dispute that it was zoned R.D.P. at the time of the Baltimore Gas & Electric deed in 1973. That is why we brought to the Board's attention the minimum one (1) acre lot requirement applicable at that time.

Here, the .7 acre Baltimore Gas & Electric Company piece of property deed in 1973 does not legally qualify as a lot of record for development purposes and was not a subdivision (for development). Moreover, the 1973 deed did not intend to confer on BG&E any density or residential development rights. And the right to farm use, including residential use, on the overall property (including the BG&E piece) remained in the Grantor, Bessie Curtis. In effect, for residential development purposes, there was no change in the lot of record. Otherwise stated, there was no new lot of record for BG&E. Thus, when Bill #98-75 and Bill #178-79 established the R.C. 2 zone, the pertinent

Mr. William Clark
Ms. Diane Levero
Board of Appeals of Baltimore County
July 27, 1994
Page Three

lot of record included and still includes the BG&E piece. Because the acreage is approximately 13 acres, including this piece, the allowed density under Bill #178-79 is two (2) principal houses or building lots. The BG&E transaction simply did not create or constitute authority for an extra building lot.

Even if the BG&E transaction somehow were assumed to create a new building lot or density unit, the Baltimore County Zoning law does not authorize the transfer of it from BG&E's utility area back on to the rest of the property. The reason is that, under this assumption, the hypothetical BG&E lot of record is separate from the "Bessie Curtis" lot of record, and there is no authority in the R.C. 2 zone legislation for transfer of density rights between two separate lots of record.

The above explanation necessarily requires some length because of the evolution of the different rural zoning classifications, their density restrictions, and the interplay with the relevant deeds. However, once the legislative chronology and structure is understood, the legal framework for density is relatively easily applied.

Thus, based on the undisputed facts, the legal conclusion is clear. It is fundamental to the purpose of the agricultural zone. Small utility properties such as the BG&E property here are not density multipliers. Nor can they serve as jumping off points for transfers of density.

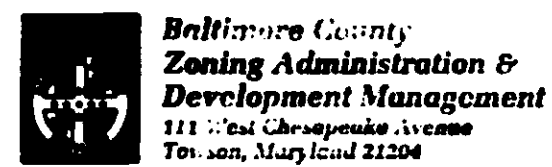
Very truly yours,

Peter Max Zimmerman
Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ/cvf
Enclosures

cc: Hurst R. Hessey, Esquire
Douglas G. Worrall, Esquire

94-42-SPH



Account: R-001-6150

Number 43
BY JLL

Date 7/28/93

COES
1 RES. SPH. FILING FEE 030 30.00
1 SIGN POSTING FEE 080 35.00
TOTAL 85.00

OWNER DENNIS MCGEE
LOC. 15906 FALLS RD.

03A03W0037M1CHRC \$85.00
BA C001:31PM07-28-93
Please Make Checks Payable To: Baltimore County

Cashier Validation

receipt

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

94-42-SPH

District: 5A Date of Posting: 7/27/94
Posted for: Approval
Petitioner: Dennis G. McGee
Location of property: 15906 FALLS RD., MD
Location of Sign: Facing road on property being acquired
Remarks:
Posted by: [Signature] Date of return: 7/27/94
Number of Signs: 1

44438
4/1/94 ACCOUNT R-001-6150
AMOUNT \$175.00
Dennis G. McGee
15906 FALLS RD.
03A03W0037M1CHRC \$175.00
BA C001:31PM07-28-93
Please Make Checks Payable To: Baltimore County

TO: PUTNEY FOUNDRY COMPANY
August 12, 1993 Issue - Jeffersonian

Please forward billing to:

Hurst R. Hessey, Esq.
36 S. Charles Street, Suite 200
Baltimore, Maryland 21201
410-539-3300

NOTICE OF HEARING

The Zoning Commission of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 94-42-SPH (Item 43)
15906 Falls Road
W/S Falls Road, 2500' S of Benson Mill Road
5th Election District - 3rd Councilmanic
Petitioner(s): Dennis G. McGee
HEARING: WEDNESDAY, SEPTEMBER 1, 1993 at 2:00 p.m. in Rm. 118, Old Courthouse.

Special Hearing to approve combination of two lots for the purpose of obtaining a building permit for single family residential unit construction.

LAWRENCE E. SCHULTZ
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

August 5, 1993

NOTICE OF HEARING

The Zoning Commission of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 94-42-SPH (Item 43)
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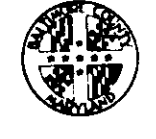
Special Hearing to approve combination of two lots for the purpose of obtaining a building permit for single family residential unit construction.

[Signature]
Arnold Jablon
Director

cc: Hurst R. Hessey, Esq.

NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

SEPTEMBER 15, 1993

NOTICE OF REASSIGNMENT

Rescheduled from 9/1/93
CASE NUMBER: 94-42-SPH (Item 43)
15906 Falls Road
W/S Falls Road, 2500' S of Benson Mill Road
5th Election District - 3rd Councilmanic
Petitioner(s): Dennis G. McGee

Special Hearing to approve combination of two lots for the purpose of obtaining a building permit for single family residential unit construction.

HEARING: THURSDAY, OCTOBER 21, 1993 at 9:00 a.m. in Rm. 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204.

[Signature]
ARNOLD JABLON
DIRECTOR

cc: Valley Planning Council
Ed Coveahey, Esq.
Douglas G. Worrall, Esq.
Hurst R. Hessey, Esq.

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

August 23, 1993

Hurst R. Hessey, Esquire
36 South Charles Street
Baltimore, Maryland 21201

RE: Case No. 94-42-SPH, Item No. 43
Petitioner: Dennis G. McGee
Petition for Special Hearing

Dear Mr. Hessey:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e., zoning commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on July 28, 1993, and a hearing was scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1. The director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by zoning personnel.

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

August 27, 1993

TO: Mr. Arnold Jablon, Director
Zoning Administration and
Development Management
FROM: J. Lawrence Pilson
Development Coordinator, DEPRM

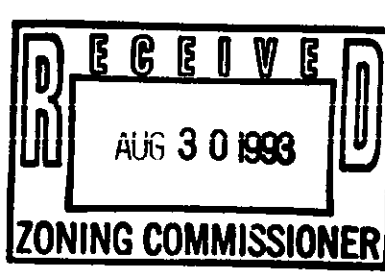
SUBJECT: Zoning Item #43, McGee Property
15806 Falls Road
Zoning Advisory Committee Meeting of August 9, 1993

This property is zoned RC-2 and is in a Master Plan designated Agricultural Protection Area. It appears as if the soils are mostly steep and adjacent to a stream. Furthermore, the 12-acre parcel has already been subdivided twice.

For these reasons, the request for the subdivision of an additional 4 acres for a house appears as if it will have little detrimental effect on the agricultural resources of the area.

WL:sp

MCGE2/DEPRM/TXTS8P



BALTIMORE COUNTY, MARYLAND
Inter-Office Correspondence

TO: Zoning Advisory Committee
FROM: Captain Jerry Pfeifer
SUBJECT: August 16, 1993 Meeting
DATE: August 6, 1993

- #40 No Comments
- #41 No Comments
- #42 No Comments
- #43 No Comments
- #44 Fence shall be equipped with gates that are a minimum of 32" in width, in order to allow egress from fenced area.
- #45 Buildings shall comply with the 1991 Life Safety Code and shall be equipped with hard-wired smoke detectors.
- #47 Townhouses for which the initial building permits were applied after July 1, 1992 are required by State Law to be sprinklered. A fire hydrant is required at Blackfoot Ct. and Pawnee Rd. and Blackfoot Ct. and Road A.
- #48 No Comments
- #49 It is recommended that the driveway be a minimum of 12'.

JP/dmc

RECEIVED
AUG 11 1993
ZADM

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

August 20, 1993

TO: Mr. Arnold Jablon, Director
Zoning Administration and
Development Management

FROM: J. Lawrence Pilson JLP/jlm
Development Coordinator, DEPRM

SUBJECT: Zoning Item #43, McGee Property
15806 Falls Road
Zoning Advisory Committee Meeting of August 9, 1993

The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item.

Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains and Forest Conservation.

Prior to the approval of the building permit, soil percolation tests must be conducted. Also, subsequent to the approved percolation tests, a water well must be drilled which meets the Maryland State Well Construction Regulations and the Water Supply Laws of Baltimore County.

This plan is also being reviewed by the Agricultural Preservation Program of this Department. Comments, if any, will be forthcoming. Applicant may contact Wally Lippincott at 887-2904 for further information.

JLP:JWL:sp

McGEE/DEPRM/TXTSPB

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration &
Development Management

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

DATE: August 12, 1993

SUBJECT: 15806 Falls Road

INFORMATION:

Item Number: 43

Petitioner: Dennis G. McGee

Property Size:

Zoning: R.C. 2

Requested Action:

Hearing Date:

SUMMARY OF RECOMMENDATIONS:

As outlined in the addendum prepared by the applicant's attorney, Mr. Hurst R. Hessey, the history of the McGee property is complicated, indeed.

In reference to the subject property, staff has considered a Cycle Zoning Petition, Comprehensive Zoning Map Issue and a Petition for Special Hearing. Through every review process, staff has been aware of the applicant's unfortunate circumstances.

Based upon a review of the applicant's request, it appears that the Petition for a Special Hearing is an appropriate action. If granted, it will enable Mr. McGee to apply for a building permit.

Prior to final consideration of this matter, staff recommends that additional information be provided regarding access to the subject site.

Prepared by:

Division Chief:

PK/JL:lw

MDOT
Maryland Department of Transportation
State Highway Administration

O. James Lighthizer
Secretary
Hal Kassoff
Administrator

8-10-93

Re: Baltimore County
Item No. 43 (JLL)

Ms. Helene Kehring
Zoning Administration and
Development Management
County Office Building
Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204

Dear Ms. Kehring:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration projects.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

Bob Small
John Contestabile, Chief
Engineering Access Permits
Division

My telephone number is

Teletypewriter for Impaired Hearing or Speech
383-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-492-5082 Statewide Toll Free
707 North Calvert St., Baltimore, Maryland 21203-0717

RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER
W/S Falls Rd., 2500' S of Benson Mill Rd. (15906 Falls Rd.), : OF BALTIMORE COUNTY
5th Election District :
3rd Councilmanic District : Case No. 94-42-SPH

DENNIS G. McGEE, Petitioner :

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Dowllo
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, Maryland 21204
(410) 887-2188

I HEREBY CERTIFY that on this 19th day of August, 1993, a copy of the foregoing Entry of Appearance was mailed to Hurst R. Hessey, Esquire, 36 S. Charles St., #2400, Baltimore, MD 21201, Attorney for Petitioner.

Peter Max Zimmerman

AUG 20 1993

ZADM

APPEAL

Petition for Special Hearing
W/S Falls Road, 2500 Ft. S of Benson Mill Road
(15906 Falls Road)
5th Election District - 3rd Councilmanic District
Dennis G. McGEE-PETITIONER
Case No. 94-42-SPH

Petition(s) for Special Hearing

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

Petitioner(s) and Protestant(s) Sign-In Sheets

Petitioner's Exhibits: 1 - Plat for Special Hearing

Protestant's Exhibits: 1 - Deed - Liber 5355, Page 052

2 - Deed - Liber 6671, Page 814

Memorandum on behalf of Valleys Planning Council, Inc.

Petitioner's Response to Memorandum on behalf of Valleys Planning Council, Inc.

Zoning Commissioner's Order dated March 3, 1994 (Denied)

Notice of Appeal received on March 30, 1994 from Peter Max Zimmerman, People's Counsel for Baltimore County

Notice of Appeal received on April 1, 1994 from Douglas G. Worrall on behalf of the Valleys Planning Council

c: Hurst R. Hessey, Esquire, 36 S. Charles Street, Suite 2400, Baltimore, MD 21201

Douglas Worrall, Esquire, Smith, Somerville & Case, 100 Light Street, Baltimore, MD 21202

Ms. Margaret Worrall, Valleys Planning Council, P.O. Box 5402, Towson, MD 21285-5402

People's Counsel of Baltimore County
Rm. 304, County Office Bldg., Towson, Md. 21204

Request Notification: P. David Fields, Director of Planning & Zoning
Patrick Keller, Office of Planning & Zoning
Lawrence E. Schmidt, Zoning Commissioner
W. Carl Richards, Jr., Zoning Coordinator
Docket Clerk
Arnold Jablon, Director of ZADM

4/12/94 -Notice of Assignment for hearing scheduled for Thursday, July 21, 1994 at 10:00 a.m. sent to following:

People's Counsel for
Baltimore County
Douglas Worrall, Esquire
Valleys Planning Council
Hurst R. Hessey, Esquire
P. David Fields
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

7/21/94 -Hearing concluded before the board. (H.C.M.) Matter to be deliberated on Wednesday, September 7, 1994 at 9:00 a.m.; Deliberation notice sent to parties. FYI/calendar copy to Board members.

9/07/94 -Record opened prior to deliberation; above material accepted by Board as part of record of this matter with no objections. Record then closed and Board proceeded to deliberation.

- Petition for Special Hearing denied by majority (C & M); WITH to prepare dissenting opinion /petition should be granted. Written Opinion and Order to be issued by Board. Any appeal to be taken from date of the final written Order.

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

April 12, 1994

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 94-42-SPH

DENNIS G. McGEE -Petitioner
W/s Falls Road, 2500 ft. S of Benson Mill Road
(15906 Falls Road)
5th Election District
3rd Councilmanic District

SPH -Approval to combine two lots for purpose of obtaining building permit for single-family dwelling.

3/03/93 -Z.C.'s Order in which Petition for Special Hearing was DENIED. (Petitioner's request denied; appeal filed by People's Counsel and Protestants.)

ASSIGNED FOR:

THURSDAY, JULY 21, 1994 at 10:00 a.m.

cc: People's Counsel for
Baltimore County

Appellant

Douglas Worrall, Esquire
Valleys Planning Council

Counsel for Appellants /Protestants
Appellants /Protestants

Hurst R. Hessey, Esquire

Counsel for Petitioner

P. David Fields
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

Kathleen C. Weldenhammer
Administrative Assistant

PLEASE RETURN SIGN AND POST TO ROOM 49 ON DAY OF HEARING.

111 West Chesapeake Avenue
Towson, MD 21204

Baltimore County Government
Office of Zoning Administration
and Development Management



(410) 887-3353

April 1, 1994

Hurst R. Hessey, Esquire
36 S. Charles Street, Suite 2400
Baltimore, MD 21201

RE: Petition for Special Hearing
W/S Falls Road, 2500 ft. S of Benson Mill Road
(15906 Falls Road)
5th Election District
3rd Councilmanic District
Dennis G. McGEE-Petitioner
Case No. 94-42-SPH

Dear Mr. Hessey:

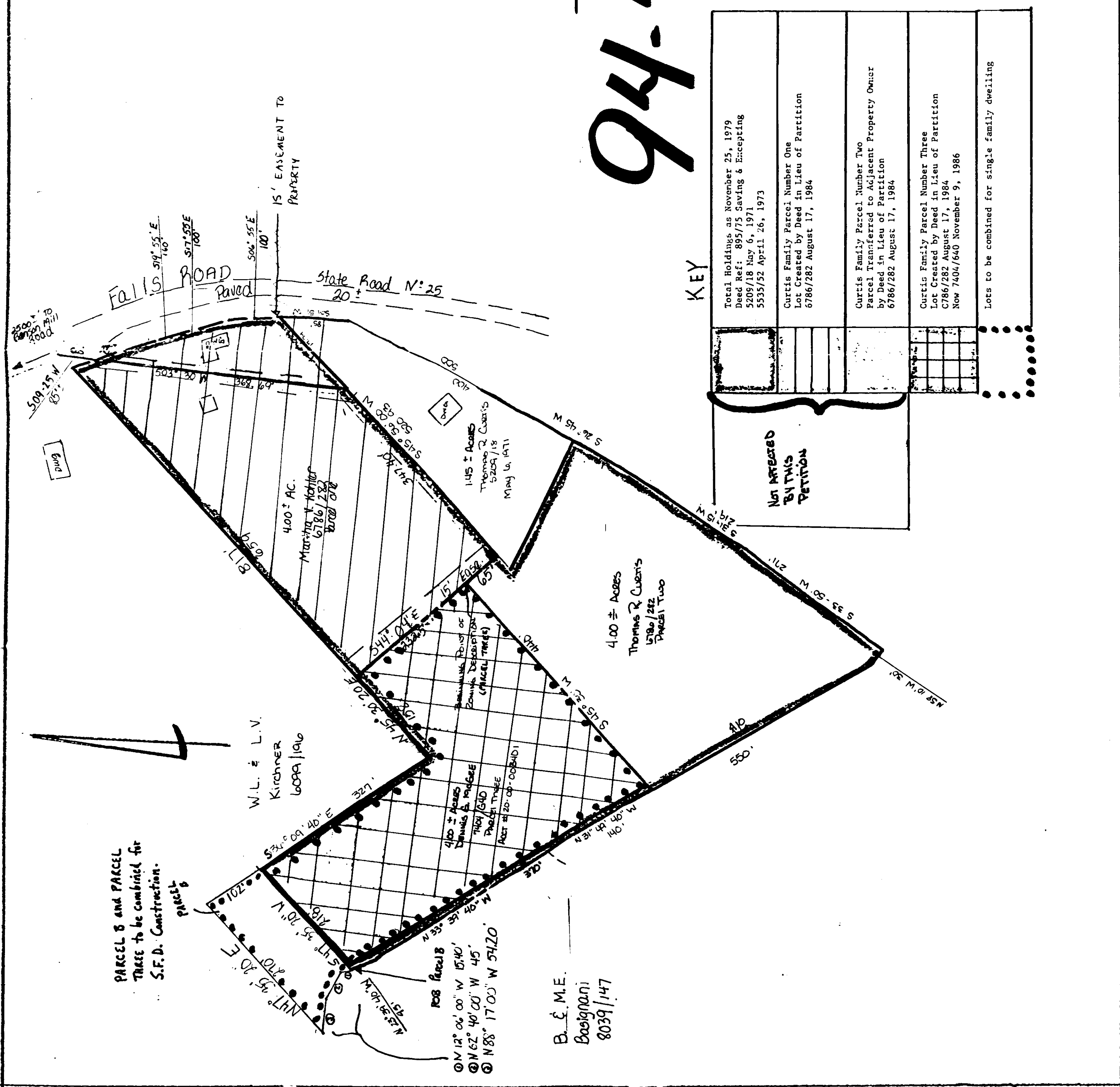
Please be advised that an appeal of the above-referenced case was filed in this office on March 30, 1994 by Peter Max Zimmerman, People's Counsel for Baltimore County. All materials relative to the case have been forwarded to the Board of Appeals.

If you have any questions concerning this matter, please do not hesitate to contact Julie Winiarski at 887-3391.

Sincerely,
Arnold Jablon
Director

AJ:jaw

c: Douglas Worrall, Esquire
Ms. Margaret Worrall
People's Counsel



94-42-S PH

Zoning Data	
Existing Zoning	RC-2
Proposed Zoning	RC-5
Area of Site	4.00 Acres
Private well and septic system	

ZONING PLAT 15906 Falls Road
5th Election District, Baltimore County, Md.
Scale 1" = 100'
February 28, 1991
Revised: 6/22/98

5/0

Hurst R. Hessey, Esquire
2400 Charles Center South
36 South Charles Street
Baltimore, Maryland 21201
(410) 539-3300

PLAT FOR SPECIAL HEARING

Appellants Ex. 1

MICHAEL B. DALLAS
REGISTERED SURVEYOR
SUITE 200
24 W. PENNSYLVANIA AVENUE
TOWNSHIP, MD. 21204
301 - 434 - 0020

MICROFILMED

	Total Holdings as November 25, 1979 Being 188 Acres, 93/100 Acre Saving & Excepting Being 188 Acres, 93/100 Acre Saving & Excepting 5535/32 AP-11 26, 1973	Currie Family Parcel Number One Lot Created by Deed in Lieu of Partition 6786/282 August 17, 1984	Currie Family Parcel Number Two Lot Created by Deed in Lieu of Partition 6786/282 August 17, 1984	Currie Family Parcel Number Three Lot Created by Deed in Lieu of Partition 6786/282 August 17, 1984 New 7404/640 November 24, 1986
Lots to be combined for single family dwelling				

NOT AFFECTED
BY THIS
PETITION

Lots to be combined for single family dwelling

AP. EX. 2

LIBEN355 MH052

Application No. H-62068 Parcel 34
TJC:sad

THIS DEED, Made this 26th day of April, in the year one thousand nine hundred and seventy-three, by and between BESSIE A. CURTIS, Widow, party of the first part, and

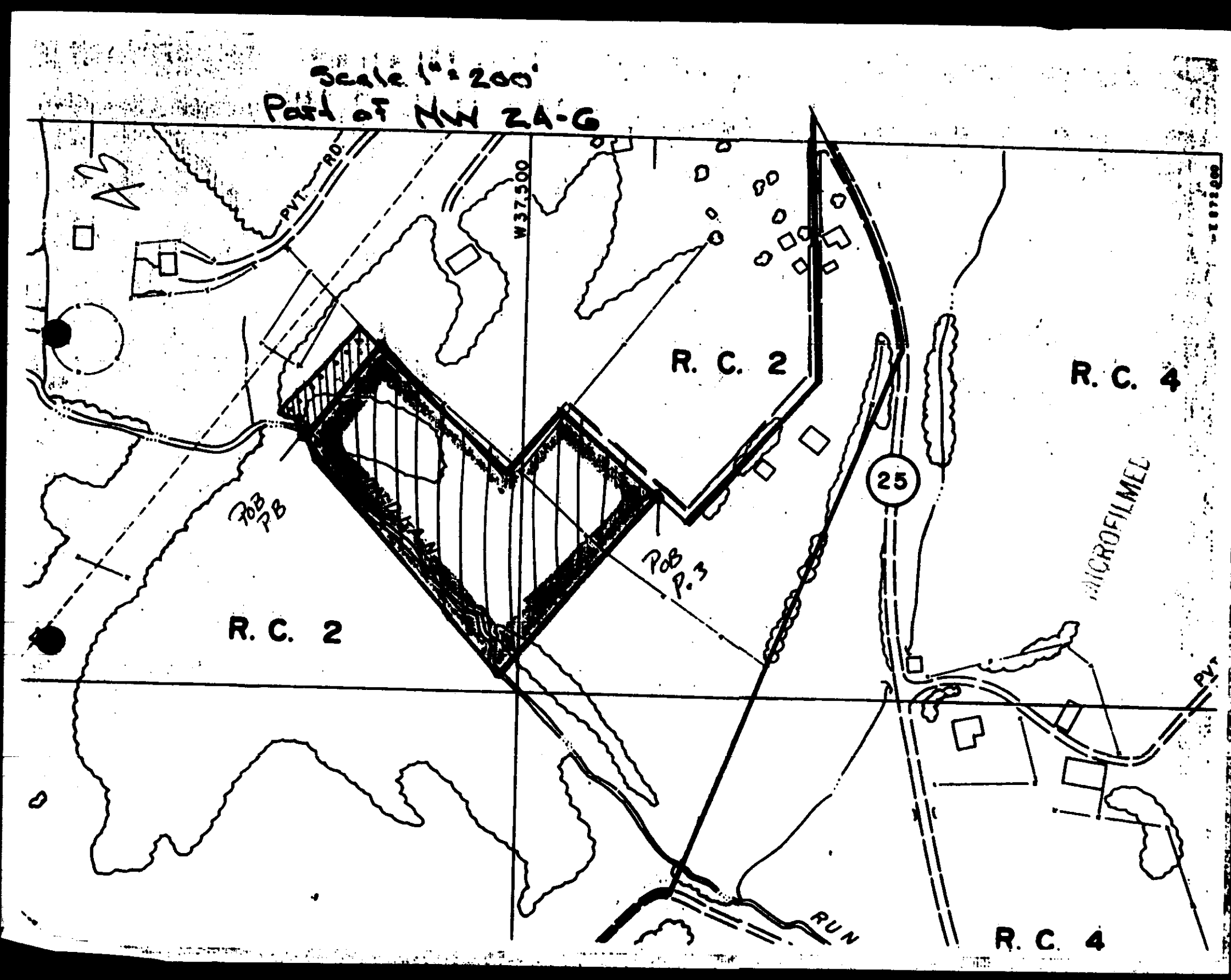
✓ BANKERS TRUST COMPANY, a corporation of the State of New York, Trustee, party of the second part, and BALTIMORE GAS AND ELECTRIC COMPANY, a corporation of the State of Maryland, party of the third part.

WHEREAS, the said party of the third part, by its original indenture dated February 1, 1919, and recorded among the Mortgage Records of Baltimore County in Liber W.P.C. No. 555, folio 1, etc., and supplemental indentures thereto, conveyed to the said party of the second part, Trustee, for the uses and purposes therein set forth, all the property of the said Baltimore Gas and Electric Company then owned or hereafter to be acquired by it; and

WHEREAS, in order to vest the title to the property hereinafter described in the said party of the second part, as Trustee under said original indenture dated February 1, 1919, and indentures supplemental thereto, it is now proposed to grant and convey the property hereinafter described directly to the said party of the second part, as such Trustee, and to the said party of the third part, subject, in all respects, to the right, title and interest of the said party of the second part, as such Trustee.

NOW, THEREFORE, THIS DEED WITNESSETH: That in consideration of the premises and the sum of Five (\$5.00) Dollars, and other valuable considerations, this day paid, receipt whereof is hereby acknowledged, the said party of the first part does hereby grant and convey unto the said Bankers Trust Company, Trustee under the afore-said original indenture dated February 1, 1919, and indentures supplemental thereto, and its successors in said trust, for the uses and purposes and upon the trusts in said indentures set forth and subject to the interest and estate so vested in Bankers Trust Company, Trustee, unto the said Baltimore Gas and Electric Company, its successors and assigns, in fee simple, all the parcel of land situate in the Fifth Election District of Baltimore County, State of Maryland, and described as follows:

APR 10 1974 2 33.00 MS



4p. Ex. 3

DEEP 6671 814

THIS DEED, Made this 4th day of February, in the year one thousand nine hundred and eighty-four, by and between MARTHA VIRGINIA KOHLER, Personal Representative of the Estate of Bessie Alma Curtis, deceased, party of the first part; and MARTHA VIRGINIA KOHLER, THOMAS ROBERT CURTIS and HARRY LEVI CURTIS, parties of the second part.

WHEREAS, by Deed dated March 13, 1932, the property hereinafter described was granted and conveyed by William M. Pascepy, divorced, unto Levi T. Curtis and Bessie A. Curtis (also sometimes known as Bessie Alma Curtis), his wife, and which Deed is recorded among the Land Records of Baltimore County, Maryland, in Liber L.McL.M. No. 895, folio 75, and

WHEREAS, the said Levi T. Curtis departed this life on or about June 18, 1961, survived by his widow, Bessie Alma Curtis, and the latter departed this life on or about November 7, 1962, leaving a Last Will and Testament filed of record in the Orphan's Court of Baltimore County in Estate No. 51845 and in which Estate the said Martha Virginia Kohler was appointed Personal Representative on February 15, 1963, and

WHEREAS, by First and Final Administration Account filed in the aforementioned Estate the property hereinafter described was distributed by Martha Virginia Kohler, Personal Representative unto the parties of the second part, and

WHEREAS, pursuant to the Estates and Trust Article of the Annotated Code of Maryland, the party of the first part is authorized to execute these presents in order to vest title to the hereinafter described property in the parties of the second part.

NOW, THEREFORE, WITNESSETH, THAT in consideration of the premises and other good and valuable consideration (the actual monetary consideration being none), the receipt whereof is hereby acknowledged, the said Martha Virginia Kohler, Personal Representative of the Estate of Bessie Alma Curtis, deceased, pursuant to the power and authority vested in her pursuant to the Estates and Trust Article of the Annotated Code of Maryland and in furtherance of the First and Final Administration Account filed in the said Estate, does grant and convey unto Martha Virginia Kohler, Thomas Robert Curtis and Harry Levi Curtis, their personal representatives and assigns, all that parcel of ground situate, lying and being in the Fifth Election District of Baltimore County, State of Maryland, and described as follows, that is to say:

FOR DESCRIPTION SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

TRANSFER TAX NOT REQUIRED
By order of Recorder
BALTIMORE COUNTY, MARYLAND
Notary Public
Date 2-23-64 Sec. 11-85 H

1003/23/64
CLERK

JERRY S. BOPHNER
ATTORNEY AT LAW
101 E. Calver Street
Baltimore, Md. 21202
Phone 567-0522

RECEIVED
NOTARY
DATE 2-23-64

MICROFILMED