

IN RE: PETITIONS FOR SPECIAL HEARING
AND VARIANCE – NW/S Cross Road,
2191.48' NE of Chapel Road
(9534 Cross Road)
11th Election District
7th Council District

Ermanno Florio
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Cases Nos. 99-331-SPH & 01-205-A

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

These matters come before this Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed separately by the owner of the subject property, Ermanno Florio. Specifically, in February 1999, the Petitioner filed for special hearing relief under Case No. 99-331-SPH seeking approval of 19 authorizations (building permits) in the Belair Road Sub-area of the Honeygo District, due to the availability of existing public water and sewer facilities to the subject site. At the public hearing held on April 7, 1999, Mario (Ermanno) and Lois Florio, property owners, appeared, as did Newton A. Williams, Esquire, attorney for the Petitioner. Appearing as interested persons were Robert Lund, a nearby resident, and John R. Clark, owner of property in a neighboring subdivision, and his attorney, Ronald A. Decker, Esquire. Subsequent to the hearing, written comments were received from the Office of Planning, through the County's Office of Law, wherein certain issues were raised and objections expressed in opposition to the Petitioners' request. Specifically, those comments opined that this Zoning Commissioner was prohibited from granting the relief requested in the form presented. Due to the lengthy exchange of correspondence that followed regarding this issue, an opinion was not rendered in Case No. 99-331-SPH.

Subsequently, realizing the legal roadblocks presented by his Petition for Special Hearing, Mr. Florio requested relief in an alternate form through the Petition for Variance filed in November, 2000 in Case No. 01-205-A. Under Case No. 01-205-A, the Petitioner seeks relief

from Section 259.7.S of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit sewer connections from the Belair Road Sub-area to a sewer interceptor in a different sub-area (Bean Run). In addition, the Petitioner requests consolidation of this variance request with the special hearing relief requested in Case No. 99-331-SPH. In that the Petitions request similar relief and present common questions of law and fact, this single opinion is issued.

Appearing at the variance hearing in support of the request were Ermanno Florio, property owner, and Ray Hopkins, a representative of KCI Technologies, Inc., who prepared the site plan for this property. There were no Protestants or other interested persons present.

The subject property at issue is a rectangular shaped parcel located on the northwest side of Cross Road, just east of Chapel Road in Perry Hall. The property contains approximately 8.0 acres in area, zoned D.R.3.5, and is located within the Honeygo Overlay District. As noted above, the Petitioner proposes to develop the site with 19 single family homes, as shown on the site plan submitted into evidence in Case No. 99-331-SPH and marked as Petitioner's Exhibit 1. That plan shows the construction of a new public road, to be known as Florio Drive, which will transect the property from Cross Road to the southeast, into an adjacent property to the northeast. In addition to the proposed 19 homes, the plan also shows areas of forest conservation and forest buffer easements. Additionally, a storm water management reservation area is proposed.

The proposal for this subdivision proceeded through the development review process, as codified in Title 26 of the Baltimore County Code, and was approved by Order of the undersigned Zoning Commissioner on March 14, 1996. Although development plan approval was granted, development of the site has not occurred due to the lack of infrastructure and the Honeygo regulations contained within Section 259 of the B.C.Z.R. That Section was enacted and incorporated as part of the zoning regulations to provide standards for development in the Honeygo District. The requirements contained therein are intended to insure that development in that area will not outpace the installation of infrastructure and that a high degree of quality will be maintained in the development of each individual parcel.

For the purposes of infrastructure, the Honeygo District was divided into four sub-areas; namely, the Belair Road, Honeygo, Bird River, and Bean Run sub-areas. Additionally, the regulations contained within Section 259 of the B.C.Z.R. created a limited number of "authorizations" which could be issued to prospective developers by the Director of the Department of Permits and Development Management (DPDM). By limiting the number of authorizations available, the regulations intend to insure that the infrastructure is in place before development occurs.

As noted above, the subject property is located in the Belair Road sub-area. At this time, there are no authorizations available to this area. Thus, by law, the Petitioner's project has been placed on "hold." Nonetheless, testimony and evidence presented shows that the subject property abuts an adjoining development, known as Perry Hall Farms, and that public sewer exists in front of the Florio property in the form of an 8-inch sanitary sewer. Moreover, although the property is located in the Belair Road sub-area, it is not dependent on the completion of the infrastructure therein, because of the availability of existing improvements which were constructed as a result of the development of Perry Hall Farms. Similarly, a 12-inch water main is located in the bed of Cross Road, along the frontage of the Florio property.

As noted above, the Petitioner originally sought relief through the Petition for Special Hearing filed in Case No. 99-331-SPH, seeking approval of "19 authorizations in the Belair Road sub-area...due to the fact that water and sewer are available to the site." As a result of the legal roadblocks presented by that Petition, Mr. Florio requested relief in an alternate form through the Petition for Variance filed in Case No. 01-205-A. In that matter, the Petitioner requests variance relief from Section 259.7.S of the B.C.Z.R. That Section governs sewer connections and allows the Director of DPDM to authorize connections to completed sewer interceptors in certain circumstances. Moreover, the Petitioner seeks relief, pursuant to Section 259.8 of the B.C.Z.R., which allows the Zoning Commissioner to variance the requirements of Section 259.7 thereof. Such variances shall be granted after the application of those standards established in Section 4A02.4.F of the B.C.Z.R.

Although the Office of Planning and the Office of Law raised certain concerns and objections to the grant of the special hearing relief, it is to be noted that the Office of Planning supports the Petitioner's request for variance relief in Case No. 01-205-A. Within its Zoning Advisory Committee (ZAC) comments offered in this case, the Office of Planning, "...supports the request to permit sewer connections from the Belair Road sub-area to a sewer interceptor in a different sub-area and to consolidate the above variance with Case No. 99-331-SPH." The Department of Public Works concurs. Through the Development Plans Review division of the Department of Permits and Development Management (DPCM), the Department of Public Works agrees that "...sewering the Florio property in the directions (sic) of the Bean Run sub-area is the best way. It will save the County from extending the 8-inch diameter sewer in Honeygo Boulevard."

Section 4A02.4.F of the B.C.Z.R. requires a finding that; 1) the demand or impact of the development proposed will be less than that assumed by the district standard that would otherwise restrict or prohibit the development, or that the standard is not relevant to the development proposal; and, 2) that the granting of the Petition will not adversely affect the person whose application was filed prior to the Petitioner's application, in accordance with Section 4A02.3.G.2(b) of the B.C.Z.R.

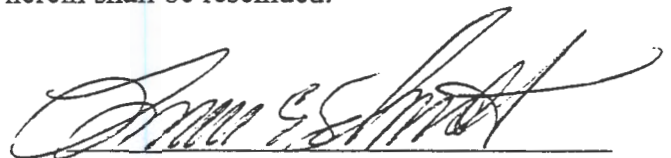
Based upon the testimony and evidence offered, I am persuaded that these requirements have been met. It is clear that the demand or impact of the proposed development will be less than that assumed by the district standard in this case, inasmuch as sewer and water lines are in place. Moreover, the grant of the Petition for Variance will not adversely affect any person who had filed an application prior to the Petitioner's application. In sum, I concur with the position advanced by the Petitioner, the Office of Planning, and the Department of Public Works. The appropriate remedy in this case is to grant the Petition for Variance approving relief from the requirements of Section 259.7.S. This will allow the Developer to establish the appropriate connections to the existing improvements along the frontage of this property. Thus, the Petition for Variance shall be granted and the Petition for Special Hearing dismissed as moot.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons set forth herein, the Petition for Special Hearing shall be dismissed as moot, and the Petition for Variance granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 24th day of January, 2001 that the Petition for Special Hearing in Case No. 99-331-SPH seeking approval of 19 authorizations (building permits) in the Belair Road Sub-area of the Honeygo District, due to the availability of existing public water and sewer facilities to the subject site, be and is hereby DISMISSED AS MOOT; and,

IT IS FURTHER ORDERED that the Petition for Variance in Case No. 01-205-A seeking relief from Section 259.7.S of the Baltimore County Zoning Regulations (B.C.Z.R.), pursuant to Section 259.8 thereof, to permit sewer connections from the Belair Road Sub-area to a sewer interceptor in a different sub-area (Bean Run), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

- 1) The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

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