IN RE: PETITION FOR SPECIAL HEARING NW/S York Road, 662 ft. N of Mt. Carmel Road 7th Election District 3rd Councilmanic District (17022 & 17024 York Road)

Thomas Pearse, Owner & Trustee and Christie L. Warner

Petitioners

BEFORE THE

* DEPUTY ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* CASE NO. 03-566-SPH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Hearing filed by the legal owners of the subject property, Thomas Pearse, owner and trustee and Christie L. Warner. The special hearing request is to confirm the non-conforming status of two dwellings on the subject lot and to permit the subdividing of the subject site into two approximately equal residential lots upon which presently exists two separate individual dwellings, along with any necessary setback variances that may be required to be given the current location and configuration of each dwelling house on each proposed lot as provided in the attached subdivision plat. The property comprises 0.610 acres, more or less, zoned R.C.5.

The property was posted with Notice of Hearing on July 17, 2003, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on July 17, 2003 to notify any interested persons of the scheduled hearing date.

Notice is taken that the property, which is the subject of these special hearing and variance requests, consists of 0.610 acres, more or less, and is zoned R.C.5.

Applicable Law

Section 500.7 of the B.C.Z.R. Special Hearings

The Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall in his discretion be necessary for the proper enforcement ϕf all

zoning regulations, subject to the right of appeal to the County Board of Appeals. The power given hereunder shall include the right of any interested persons to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any non conforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they may be affected by these regulations.

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: At the time of the hearing, August 4, 2003, all County agencies reviewing this matter had no comment. However, subsequent to the hearing, comments from DEPRM recommending denial of the request were received and sent by mail to the Petitioners' attorney on August 4, 2003 for the Petitioners' review and response. This response was received in writing by letter from the Petitioners' attorney on September 29, 2003.

Interested Persons

Appearing at the hearing on behalf of the requested special hearing relief was Thomas Pearse, owner of the property and Christie Warner. Also appearing was Tom Church, the engineer who prepared the site plan of the property. John A. Austin, Esquire represented the Petitioners. No Protestants or others' attended the hearing. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Procedure

The Petitioners understandably complain that the comments from DEPRM, received after the hearing, should not be considered for the reasons stated in attorney Austin's letter of September 24, 2003 which is made a part of the record. However, as unfortunate as this occurrence was, I will consider these comments as part of the record as this is an administrative hearing and not subject to the formal rules of procedure. Also, the Petitioners were promptly notified of the DEPRM comments the same day as the hearing and given an opportunity to respond in a hearing or otherwise. Mr. Austin has not requested a hearing pursuant to his letter in response. Therefore, I will decide the case on the record including the DEPRM comment.



Testimony and Evidence

Testimony and evidence indicated that the owner of this property, Mary Stewart Pearse, recently died with a Will leaving the "Southernmost Lot" to a granddaughter and "Northernmost Lot" to her son. See Petitioners' Exhibit No. 4. The Petitioner in this case is the personal representative of the estate, and heir to the "Northernmost Lot". See Petitioners' Exhibit No. 6. To everyone's surprise, the heirs discovered that these "Lots" had never been recorded or officially subdivided. Rather, the "Lots" were designated in a plat (see Petitioners' Exhibit No. 3) and description (see Petitioners' Exhibit No. 2), but again never recorded or subdivided as far as the County was concerned. Wanting to correct this oversight, the Petitioners request that the two homes on the property be confirmed as non-conforming and the "Lots" be officially subdivided. The heirs intended to live in each home as their residence.

DEPRM opposes these requests on the basis stated in their comments, which refer to COMAR regulations forbidding such subdivision with private water and sewerage systems with less than 10,000 sq. ft. in septic reserve area. All agree that neither "Lot" can meet this requirement. Testimony of the witnesses, however, indicated that they had separate septic systems for each lot and that there had been no problems with either. The Petitioners could not designate the existing septic areas or otherwise locate or describe either.

Testimony indicated that the whole property was purchased by the Pearse family in 1938. The first home was built on or about that year. In 1952, the family wanted to build a second home on the property, obtained a permit to do so and in 1960 the second home was constructed. The Petitioners particularly argue here that they relied on the County approval of permit to build the second home. Testimony indicated family members lived in the dwellings uninterruptedly and openly since the date of construction. RC 5 was applied to the property in 1979.

Findings of Fact and Conclusions of Law

Non conforming uses

19/03 Janes I find, based on the evidence of the case, that lawful non-conforming uses existed on the subject property prior to the year in which a change in the zoning regulations caused the use of the property to become illegal. The controlling year in this case is 1979. I also find there has not been a change in the use of the subject property since that time.

After due consideration of the testimony and evidence offered at the hearing, it is clear that the subject property has been used continuously and without interruption as two residences in a residential zone on the same property since 1960 and enjoys a legal non-conforming use.

Subdivision Line

The Petitioners also request recognition of the 1966 designation of the dividing line between "Lots" dividing the property into two equal lots. See Petitioners' Exhibit No. 1. This however is problematic. Even though I fully accept the Petitioners' assertion that family member will continue to live in these homes, there is a real likelihood that someday these "Lots" would be sold. Once into the marketplace the new owners would be shocked to find that when the septic system fails, the lot is so small, there is no room to correct the problem. Just as a comparison, a new lot would typically have three times the lot area to locate and relocate septic systems. Additionally, the County has had a policy that when subdivisions involving non-conforming uses are requested, the new subdivision must meet present County regulations. This is not possible here.

As my jurisdiction of this matter is that of zoning and not health, I will not enter the arena outlined by DEPRM and the Petitioners' response regarding COMAR regulations, but rather will grant the relief that I can regarding zoning. Rather than a subdivision line, I can offer Zoning Use Division Lines in place of the requested subdivision line which will designate the areas of use of each dwelling and should serve to define rights and responsibilities of the owners of the non-conforming uses vis a vis each other. However these are not subdivision lines and cannot be the basis of separate sale of each "Lot". Although I make no finding of such, it is my



understanding that Thomas will own 31/61 interest in the whole property and Christie will own 30/61 interest in the whole property as tenants in common as the result of the Will and this decision.

Variance Requests

As the subdivision of the property is denied, all variances associated therewith are also denied as there can be no variances granted if the subdivision is not granted.

Pursuant to the advertisement, posting of the property and public hearing held on the Petition and for the reasons given above, I believe that the special hearing request should be granted.

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this ______ day of October, 2003, that the Petitioners' request for special hearing to determine the non-conforming status of two dwellings on the property is hereby GRANTED; and

IT IS FURTHER ORDERED, that the request to permit the subdividing of the subject site into two approximately equal residential lots upon which presently exists two separate individual dwellings, is hereby DENIED; however, zoning use division lines as shown on Petitioners' Exhibit No. 1 are hereby GRANTED; and

IT IS FURTHER ORDERED, that variances requested which were part of the subdivision are also DENIED.

IT IS FURTHER ORDERED, that any appeal of this decision must be made within thirty (30) days of the date of this Order.

JOHN V. MURPHY

DEPUTY ZONING COMMISSIONER

FOR BALTIMORE COUNTY

JVM:raj

Zoning Commissioner

Suite 405, County Courts Building 401 Bosley Avenue Towson, Maryland 21204 Tel: 410-887-3868 • Fax: 410-887-3468



Baltimore County

James T. Smith, Jr., County Executive Lawrence E. Schmidt, Zoning Commissioner

October 10, 2003

John A. Austin, Esquire 29 W. Susquehanna Avenue, Suite 200 Towson, Maryland 21204

> Re: Petitions for Special Hearing Case No. 03-566-SPH Property: 17024 York Road

Dear Mr. Austin:

Enclosed please find the decision rendered in the above-captioned case.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days from the date of the Order to the Department of Permits and Development Management. If you require additional information concerning filing an appeal, please feel free to contact our appeals clerk at 410-887-3391.

Very truly yours,

John V. Murphy

Deputy Zoning Commissioner

JVM:raj Enclosure

c: Tom Pearse 1601 Mt. Carmel Road Parkton, MD 21120

> Christie Warner 30 Circle Drive Glen Rock, PA 17327

> Tom Church 6603 York Road Baltimore, MD 21212



Visit the County's Website at www.baltimorecountyonline.info



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

I/We do solemnly declare and affirm, under the penalties of

is the subject of this Petition.

perjury, that I/we are the legal owner(s) of the property which

| for the property located at | 17024 | York | ROad | Park | ton | MD |
|-----------------------------|-------------|-------|------|------|-----|----|
| which is | s presently | zoned | RC- | 5 | | |

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

the subdividing of the subject site into two approximately equal residential lots upon which presently exists two separate individual dwellings, along with any necessary setback variances that may be required to be given the current location and configuration of each dwelling house on each proposed lot as provided in the enclosed subdivision plat. Both the location of the dwellings and the division of the properties are non-conforming uses. See attached plat.

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

| | • | } |
|---|--|--|
| Contract Purchaser/Lessee: | Legal Owner(s): | |
| | Thomas Pearse Owner | and Trustee |
| Name - Type or Print | Name - Type or Print | |
| Signature | Signature Teaux | <u> </u> |
| Address Telephone N | lo. Christie LaRae Warner Name Type of Print | ······································ |
| | Christie Lucas Helanon) | |
| City State Zip Cod | de Signature Fural Walner | |
| Attorney For Petitioner: | 1601 Mount Carmel ROad | |
| | Address | Telephone No. |
| John A. Austin | Parkton MD 21120 | |
| Name - Type or Print | City | Zip Code |
| Signature de de de la | Representative to be Contacted: | |
| | John A. Austin | , |
| Company | Name | * |
| 29 W. Susquehanna Ave #200 | 29 W. Susquehanna Ave #200 | 410-821-963 |
| Address 410-821-9632 Telephone No | | Telephone No. |
| TOwson MD 21204 City State Zin Cod | Towson MD 21204 | <u></u> |
| City State Zip Cod | le City State | Zip Code |
| | OFFICE USE ONLY | |
| | ESTIMATED LENGTH OF HEARING | 15 minutes |
| Case No. 03-566-SPH | UNAVAILABLE FOR HEARING | <u></u> |
| REV 9/15/98 | Reviewed By D.THOMPSON Date 500 | 03 |

DEVELOPMENT ENGINEERING CONSULTANTS, INC.

Site Engineers & Surveyors

6603 York Road Baltimore, Maryland 21212 (410) 377-2600 (410) 377-2625 Fax

ZONING DESCRIPTION

17022 AND 17024 YORK ROAD

Beginning at a point in the center of York Road (MD. Rte. 45), being a 66.00 foot wide right-of-way at the distance of 662 feet north of the centerline of Mount Carmel Road (MD. Rte. 137). Thence the following courses and distances: 1) South 04 degrees 35 minutes 00 seconds West 122.00 feet; 2) North 86 degrees 00 minutes 00 seconds West 214.00 feet; 3) North 03 degrees 55 minutes 00 seconds East 92.20 feet; 4) North 37 degrees 45 minutes 00 seconds West 39.50 feet; 5) South 86 degrees 00 minutes 00 seconds East 242.00 feet to the place of beginning.

Containing 26,589 square feet or 0.610 acres of land, more or less.

Being known as 17022 and 17024 York Road, and located in the 7th Election District.

April 21, 2003

Contract No. 02-157

45



| BALTIMORE COUNTY, MARYLAND OFFICE OF BUDGET & FINANCE MISCELLANEOUS RECEIPT | No. 30595 | TOATA TOTOT THEN NEW ACOME TIME DAW |
|---|--------------------|--|
| DATE 1003 ACCOUNT UL AMOUNT \$ | 2006-6150 Zaoni | COLOMO 12/11/2005 PROTESTO (RED WORK WALKER 1000, 1900 PEUT IFT # 25/1577 12/11/2005 OFFH Dept. (* 525 ZUNIAN VERTI ICATION CR NO. 030095 |
| RECEIVED FROM: 100 Cus | an En | kerpt int \$500,00 \$300.00 CK \$.00 CA Battimore County, Maryland |
| DISTRIBUTION WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER | Malal | CASHIER'S VALIDATION |

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MOTE No. 23 5 4 5 9 YELLOW - CUSTOMER 4} ACCOUNT **AMOUNT** MARYL & FINANCE RECEIPT PINK - AGENCY BALTIMORE COUN MISCELLANEOUS OFFICE OF BUDGET CCOL WHITE - CASHIER DISTRIBUTION RECEIVED FROM: DATE FOR:

THE STATE OF

MI

CASHIER'S VALIDATION

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Marviand on the property identified herein as follows:

Case: #03-566-SPH
17024 York Road
Newst side of York road, 662 feet north of Mt. Carmel Road
7th Election District - 3rd Councilmanic District
Legal Owner(s): Thomas Pearse, Owner and Trustee,
Christie LaRae Warner.

Special Hearing: to permit the subdividing of the subject

Special Hearing: to permit the subdividing of the subject site into two approximately equal residential lots upon which presently exists two separate individual dwellings, along with any necessary setback variances that may be required to be given the current location and configuration of each dwelling house on each proposed lot as provided in the enclosed subdivision plat. Both the location of the dwellings and the division of the properties are nonconforming uses.

Hearing: Monday, August 4, 2003 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue.

LAWRENCE E. SCHMIDT

Zoning Commissioner for Baltimore County
NOTES: (1) Hearings are Handicapped Acres
special accommodations Please Contact
missioner's Office at (410) 887-4386.

(2) For Information concerning the File
Contact the Zoning Review Office at (410)
7/183 July 17

CERTIFICATE OF PUBLICATION

| <u>7/17</u> ,20 <u>03</u> | |
|--|--------------|
| THIS IS TO CERTIFY, that the annexed advertisement w | as published |
| in the following weekly newspaper published in Baltimore C | ounty, Md., |
| once in each ofsuccessive weeks, the first publication | n appearing |
| on 7117,2003. | |
| The Jeffersonian | |
| Arbutus Times | |
| ☐ Catonsville Times | |
| Towson Times | |
| Owings Mills Times | |
| □ NE Booster/Reporter | |
| ☐ North County News | |
| J. WUKUNSON | NG |

CERTICATE OF POSTINC

| AT | TENTION: BECKY HART | Date: July 22, 2003 |
|------|---|--|
| RE: | Case Number <u>03-566-58</u> Petitioner/Developer: <u>Tam PEARSE/J</u> Date of Hearing/Closing: <u>AUGUST</u> 4, | |
| vere | This is to certify under the penalties of perjury posted conspicuously on the property located a | that the necessary sign(s) required by law the recessary sign(s) required by law that the necessary sign(s) required by law that the necessary sign(s) required by law |
| | The sign(s) were posted on | (Month, Day, Year) |
| | A PUBLIC HEARING WILL BE HELD BY THE ZONING COMMISSIONER IN TOWNON. M.D. PARE. 40.1 POSLE - AVE. ROOM 407 COMMY COMMS BLOCK PLACE: 40.1 POSLE - AVE. ROUEST: STATEMENT FOR THE DIVISION OF THE EDWISION OF THE DIVISION OF THE EDWISION OF THE DIVISION | (Signature of Sign Poster) LINDA O'KEEFF (Printed Name of Sign Poster) 523 PENNY LANE (Street Address of Sign Poster) HUNT VALLEY MD 21030 (City, State, Zip Code of Sign Poster) 410-666-5366 (Telephone Number of Sign Poster) |

Revised 3/1/01 - \$CJ

DEPARTMENT OPERMITS AND DEVELOPENT MANAGEMENT ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The <u>Baltimore County Zoning Regulations</u> (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

| | |
|---|--------------|
| For Newspaper Advertising: | |
| Item Number or Case Number: 03-566 -SPH | |
| Petitioner PEARSE | |
| Address or Location: 17022 - 17024 York RD | |
| | |
| PLEASE FORWARD ADVERTISING BILL TO: | |
| Name: Tom CHURCH W DEVELOPMENT ENGINEERING CONSULTA | NTS |
| Address: 6603 York RD. | , |
| BAKTO. MP 21212 | |
| Teiephone Number: 410-377-2600 | |

Revised 2/20/98 - SCJ



Baltimore County
Department of Permits and
Development Management

Director's Office County Office Building 111 West Chesapeake Avenue Towson, Maryland 21204 410-887-3353

Fax: 410-887-5708

June 10, 2003

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 03-566-SPH

17024 York Road

N/west side of York Road, 662 feet north of Mt. Carmel Road

7th Election District – 3rd Councilmanic District

Legal Owner: Thomas Pearse, Owner and Trustee, Christie LaRae Warner

Special Hearing to permit the subdividing of the subject site into two approximately equal residential lots upon which presently exists two separate individual dwellings, along with any necessary setback variances that may be required to be given the current location and configuration of each dwelling house on each proposed lot as provided in the enclosed subdivision plat. Both the location of the dwellings and the division of the properties are non-conforming uses.

Hearings:

Monday, August 4, 2003 at 9:00 a.m., in Room 407, County Courts Building, 401 Bosley Avenue

Timothy Kotroco

Director

TK:klm

C: John A. Austin, 29 W. Susquehanna Ave., Suite 200, Towson 21204 Thomas Pearse, Christie LaRae Warner, 1601 Mt. Carmel Rd., Parkton 21120

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, JULY 19, 2003.

(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.

(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

TO: PATUXENT PUBLISHING COMPANY Thursday, July 17, 2003 Issue - Jeffersonian

Please forward billing to:

Tom Church
Development Engineering Consultants
6603 York Road
Baltimore, MD 21212

410-377-2600

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

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Hearings: Monday, August 4, 2003 at 9:00 a.m., in Room 407, County Courts

Building, 401 Bosley Avenue

LAWRENCE E. SCHMIDT ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.

(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



Baltimore County Department of Permits and Development Management

Development Processing County Office Building 111 West Chesapeake Avenue Towson, Maryland 21204 pdmlandacq@co.ba.md.us

August 1, 2003

John A. Austin 29 W. Susquehanna Avenue, Ste. 200 Towson, MD 21204

Dear Mr. Austin:

RE: Case Number: 03-566-SPH, 17024 York Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on May 30, 2003.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.

Supervisor, Zoning Review

WCR:klm

Enclosures

c: People's Counsel Thomas Pearse, Christie LaRae Warner, 1601 Mount Carmel Road, Parkton 21120

Printed with Soybean Ink on Recycled Paper

BALTIMORE COUNTY, MARYLAND Interoffice Memorandum

DATE:

June 4, 2003

TO:

Zoning Commissioner and File

FROM:

Donna Thompson, Planner II, Zoning Review

SUBJECT:

Petition for Special Hearing, Item 566,

Case No. 03-566-SPH

17024 York Road

After reviewing the Petition for Special Hearing and accompanying site plan with the attorney, John A. Austin and engineer, Tom Church, this petition was accepted for filing for the purposes of subdividing only. Mr. Church and Mr. Austin were advised as to the need of zoning variances from the bulk regulations in a R.C. Zone. They stated that they would file for necessary hearings once the outcome of the above hearing was determined.

DT

BALTIMORE COUNTY, MARYLAND DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO:

Timothy Kotroco

FROM:

R. Bruce Seeley (49)

DATE:

August 4, 2003

SUBJECT:

Zoning Item <u>03-566 SPH</u>

Address 17024 York Road (Pearse Property)

Zoning Advisory Committee Meeting of 6/9/03

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

This petition requests the Zoning Commissioner to approve "the subdividing of the subject site into two approximately equal residential lots upon which presently exists two separate individual dwellings,..."

COMAR 26.04.03.03(1), pertaining to subdivision of property utilizing private sewage disposal systems, states "For each dwelling unit a minimum area of 10,000 square feet, exclusive of buildings, easements, right-of-ways, and other permanent or physical objects shall be provided for the subsurface disposal of sewage." (See copy attached)

Since there is not a 10,000 square foot sewage disposal reserve area for each dwelling on this property, the Department of Environmental Protection and Resource Management recommends **DENIAL** of this request.

Furthermore, COMAR 26.04.03.02K states "A subdivision plat may not be recorded in the land record offices of this State unless it bears the signature of the Secretary or the Secretary's designee." (See copy attached) DEPRM has maintained that subdivisions of property utilizing private water and/or sewage disposal systems must have DEPRM approval prior to recordation. Therefore, we will not approve the subdivision of this property until COMAR requirements are met.

Reviewer: Bruce Seeley

Date: 8/4/2003

Attachments

tion of the Approving Authority upon written request for not more than 12 months following the termination date of the preliminary plan.

K. A subdivision plat may not be recorded in the land record offices of this State unless it bears the signature of the Secretary or the Secretary's designee.

.03 Minimum Ownership.

- A. In all subdivisions, individual water supply and sewage disposal facilities may be permitted when in conformance with the county plan and where the following acceptable physical conditions are present: topography, soil types, surface and subsurface drainage, and the absence of a fluctuating high water table. These determinations shall be based upon available information which shall include the history of individual water supply and individual sewerage system failures in adjacent areas, extent of existing individual water supplies and sewerage systems, information obtained from the soil survey for the jurisdiction, standard percolation tests, available geologic and hydrologic data and any other information which may be available. Minimum ownership of property shall be determined in accordance with the following criteria:
- (1) For each dwelling unit a minimum area of 10,000 square feet exclusive of buildings, easements, right-of-ways, and other permanent or physical objects, shall be provided for the subsurface disposal of sewage.
- (2) Minimum ownership shall be determined in accordance with provisions of Regulation .02A, B, and C and the following table:

| Time Required for a 1 Inch Drop | uired r a Using Individual nch Wells & | | Using I Water Fa & Indiv Sewerage Min. Width | acilities vidual Systems |
|---|--|------------------|--|--------------------------------|
| (minutes) | (feet) | (sq. ft.) | (feet) | (sq. ft.) |
| 1 to 5 | 100 | 20,000 | 100 | 15,000 |
| 6 to 15 16 to 25 | 125 150 | 25,000 30,000 | 100 100 | 17,500 20,000 |
| 26 to 30 | 150 | 40,000 | 150 | 30,000 |

Over 30 minutes unacceptable

(3) Where soil percolation test results indicate readings of less than 1 minute for a 1 inch drop, the approval or rejection of the area

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

DATE: June 23, 2003

TO:

Timothy M. Kotroco, Director

Department of Permits & Development Management

FROM

Robert W. Bowling, Supervisor Bureau of Development Plans

Review

SUBJECT:

Zoning Advisory Committee Meeting

For June 16, 2003

Item Nos. 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, and 569

The Bureau of Development Plans Review has reviewed the subject-zoning items, and we have no comments.

RWB:CEN:jrb

cc: File

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO:

Arnold Jablon, Director

Department of Permits and Development Management

DATE: June 9, 2003

FROM:

Arnold F. 'Pat' Keller, III

Director, Office of Planning

SUBJECT:

Zoning Advisory Petition(s): Case(s) 03-559, 03-563 and 03-566/

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer. For further questions or additional information concerning the matters stated herein, please contact Mark A. Cunningham in the Office of Planning at 410-887-3480.

Section Chief:

AFK/LL:MAC



700 East Joppa Road Towson, Maryland 21286-5500 410-887-4500

County Office Building, Room 111 Mail Stop #1105

June 10, 2002

111 West Chesapeake Avenue Towson, Maryland 21204

ATTENTION: Rebecca Hart

Distribution Meeting of: JuneS 9, 2003

Item No.:

558, 560-569

Dear Ms. Hart:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

7. The Fire Marshal's Office has no comments at this time.

LIEUTENANT JIM MEZICK Fire Marshal's Office PHONE 887-4881 MS-1102F

cc: File



Robert L. Ehrlich, Jr., Governor Michael S. Steele, Lt. Governor

Robert L. Flanagan, Secretary Nell J. Pedersen, Acting Administrator

MARYLAND DEPARTMENT OF TRANSPORTATION

6.9.03 Date:

Ms. Rebecca Hart Baltimore County Office of Permits and Development Management County Office Building, Room 109 Towson, Maryland 21204

RE:

Baltimore County

Item No.

Dear Ms. Hart:

We have reviewed the referenced item and have no objection to approval, as a field inspection reveals that the existing entrance(s) on to MD/US 45. are acceptable to the State Highway Administration (SHA) and this development is not affected by any SHA projects.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545 5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

Kenneth A. McDonald Jr., Chief Engineering Access Permits Division

RE: PETITION FOR SPECIAL HEARING 17024 York Road; NW/side York Road,

662' N of Mt. Carmel Road

7th Election & 3rd Councilmanic Districts

Legal Owner(s): Thomas Pearse, Owner & *

Trustee, Christie LaRae Warner

Petitioner(s)

BEFORE THE

ZONING COMMISSIONER

FOR

BALTIMORE COUNTY

* 03-566-SPH

ENTRY OF APPEARANCE

Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent/documentation filed in the case.

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

CAROLE S. DEMILIO
Deputy People's Counsel

Old Courthouse, Room 47 400 Washington Avenue

Towson, MD 21204 (410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of June, 2003, a copy of the foregoing Entry of Appearance was mailed to John A Austin, Esquire, 29 W Susquehanna Avenue, Towson, MD 21204, Attorney for Petitioner(s).

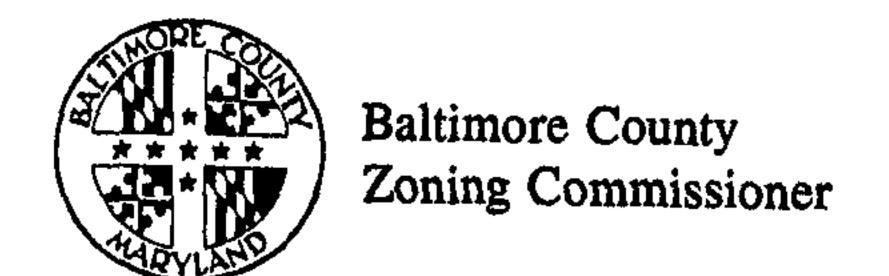
RECEIVED

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

JUN 17 2003

Per. bh



Suite 405, County Courts Bldg. 401 Bosley Avenue Towson, Maryland 2 1204 410-887-4386

Fax: 410-887-3468

August 4, 2003

John A. Austin, Esquire 29 W. Susquehanna Avenue, #200 Towson, Maryland 21204

Re: Petition for Special Hearing

Case No. 03-566-SPH

Property: 17024 York Road (Pearse Property)

Dear Mr. Austin:

At the hearing on the above case, I gave you a copy of the Zoning Advisory Committee (ZAC) comments, which indicated that no agency objected to the subdivision. However, after the hearing, R. Bruce Seeley presented me with the attached comments, which, as you can see, indicate that, the Department of Environmental Protection & Resource Management (DEPRM) recommends I deny your request for the reasons stated. You will recall my anxiety at the hearing about approving a lot with only 0.3 acres with well and septic systems.

In addition, Mr. Seeley points out that regardless of whether I approve the subdivision or not, DEPRM will not approve the subdivision. This calls into question the power that the Zoning Commissioner has in these circumstances.

I will hold the case open for your subsequent review of this matter with DEPRM. I will be happy to set up another date for testimony and argument on this matter if you or Mr. Seeley so desire. However, should such a hearing occur, I anticipate Mr. Seeley's position will not only involve DEPRM's opposition to the request for subdivision, but also DEPRM's contention that my office does not have the power to direct DEPRM's action to approve the subdivision under the circumstances.

Please let me know your thoughts on how you would like to proceed.

Very truly yours,

John V. Murphy

Deputy Zoning Commissioner

JVM:raj

Department of Permits and Development Management

Development Processing County Office Building 111 W. Chesapeake Avenue Towson, Maryland 21204



Baltimore County

James T. Smith, Jr., County Executive Timothy M. Kotroco, Director

December 11, 2003

Mr. John A. Austin 29 W. Susquehanna Aveue Towson, Maryland 21204:

RE: Case:03-566-SPH, 17024 York Road Parkton Maryland

Please be advised that your appeal of the above-referenced case was received in this office on November 6, 2003. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to call the Board at 410-887-3180.

Sincerely,

Timothy Kotroco

Director

KT:rjc

c: John V. Murphy, Deputy Zoning Commissioner Timothy Kotroco, Director of PDM People's Counsel



APPEAL

Petition for Special Hearingl
17024 York Road
7th Election District – 4th Councilmanic District
Thomas Pearse Owner and Trustee, Christie LaRae Warner
Case No.: 02-566-SPH

Petition for Special Hearing (May 3, 2003)

Zoning Description of Property

Notice of Zoning Hearing (June 10, 2003)

Certification of Publication (The Jeffersonian issue July 17, 2003)

Certificate of Posting (July 17, 2003 posted by Linda O'Keefe)

Entry of Appearance by People's Counsel (June 17, 2003)

Petitioner(s) Sign-In Sheet
One Sheet

Protestant(s) Sign-In Sheet (None)

Citizen(s) Sign-In Sheet None

Zoning Advisory Committee Comments

Petitioners' Exhibits:

- 1. Plat to Accompany Petition for Special Hearing (3 copies)
- 2. Letter 12/13/66 Dollenberg Brothers (3) copies
- 3. 1'' = 20 feet Survey 12/12/66
- 4. Last Will and Testament of Mary Stewart Pearse

Protestants' Exhibits:

None

Miscellaneous (Not Marked as Exhibits):

- 1. Letter from John V. Murphy (8/4/03)
- 2. Letter from John A. Austin (9/24/03)

Deputy Zoning Commissioner Order 10/19/03 request for special hearing to determine the nonconforming status of two dwellings on the property is hearby <u>GRANTED</u>. Further ordered, that the request to permit the subdividing of the subject site into two approximately equal residential lots upon presently exists two separate individual dwellings, is hereby <u>DENIED</u>; however, zoning use division lines as shown on Petitioner' Exhibit No. 1 are hearby granted and it is further ordered, that variances requested which were part of the subdivision are also <u>DENIED</u>.

Notice of Appeal received on November 6, 2003 John A. Austin

c: John A. Austin, 29 W. Susquehanna Avenue, Suite 200, Towson, Md 21203
Thomas Pearse, Christie LaRae Warner 1601 Mt. Carmel Rd. Parkton 21120
Timothy Kotroco, Director Permits Development Management

date sent 12/10/03 rjc

§ 1A04

S Agree S 1A04

- 1. Lot area; density control. A lot having an area of less than one acre may not be created in an R.C.5 Zone. The maximum gross residential density of a lot of record is 0.667 dwelling per acre. [Bill No. 178-1979 ²²]
- 2. Building setbacks. Any principal building hereafter constructed in an R.C.5 Zone shall be situated at least 75 feet from the center line of any street and at least 50 feet from any lot line other than a street line, except as otherwise provided in Paragraph 5 below.
- 3. Coverage. No more than 15% of any lot in an R.C.5 Zone may be covered by buildings, except as otherwise provided in Paragraph 5 below.
- 4. Exceptions for certain record lots. Any existing lot or parcel of land with boundaries duly recorded among the land records of Baltimore County with the approval of the Baltimore County Office of Planning on or before the effective date of these zoning regulations and not part of an approved subdivision that cannot meet the minimum standards as provided within the zone may be approved for residential development in accordance with the standards prescribed in force at the time of the lot recordation.
- 5. Dwellings per lot. No more than one dwelling is permitted on any lot in an R.C.5 Zone, but not excluding additional dwellings for bona fide tenant farmers.

1A04.4 Special provisions for life care or continuing care facilities. [Bill No. 6-1984]

- A. Notwithstanding contrary provisions contained in these regulations, life care or continuing care facilities are subject to the following provisions:
 - 1. May only be located on a site containing a minimum of 450 acres. To obtain the required acreage, property zoned R.C.2 may be combined with property zoned R.C.5. The entire building envelope of the facility must be located in the R.C.5 portion of the tract and the building envelope is limited to a maximum of 12.5% of the gross acreage (building envelope site).
 - 2. Density control. A maximum of 5.5 dwelling units per acre of building envelope site is permitted.
 - 3. No part of any building shall be closer than 500 feet to the nearest public road. [Bill No. 36-1988]
 - 4. The balance of the tract outside of the building envelope may only be used for open space, and recreational uses permitted by special exception in the respective R.C.2 and R.C.5 Zones, provided that no recreational use which is permitted by special exception may be allowed within 200 feet of any public road. [Bill No. 36-1988]
 - 5. Neither the use of the site for a life care or continuing care facility nor any increased density of the site allowed by legislative act may be considered as

KC5

Editor's Note: This bill also repealed former Paragraph 2, "Minimum diametral dimension," which followed this paragraph.

PLEASE PRINT CLEARLY

CASE NAME 17024 York 164 CASE NUMBER 03-566-5PH DATE 8/4/2003

PETITIONER'S SIGN-IN SHEET

| E- MAIL | | | |
|--|--|--|--|
| CITY, STATE, ZIP Balto Co. 21212 Glew Coch, PA 17327 FARKTON, MD. 21120 | | | |
| ADDRESS GOOS York Kel. 30 Circle Drive & 1601 PIT, CHRPFEL RD | | | |
| Jon Chard Ton Chard Throthe Waner Ton Pearsé John Hastin | | | |

ATTORNEY AND COUNSELOR AT LAW

29 WEST SUSQUEHANNA AVENUE SUITE 200 TOWSON, MARYLAND 21204

(410) 821-9632 FAX (410) 494-8087

October 31, 2003

Department of Permits and Development Management County Office Building 111 West Chesapeake Avenue Towson, MD 21204

Re: Case No. 03-566-SPH Property: 17024 York Road

Dear Madam/Sir:

Please be advised that this office represents Thomas Pearse in connection with the above-captioned matter. Please use this letter as a formal notice of an appeal from the decision of the Deputy Zoning Commissioner dated October 9, 2003. Enclosed you will find a check in the amount of \$300.00 to cover the cost of filing this appeal.

Thank you for your prompt attention in this matter.

Very truly yours,

ว์ohn A. Austin

JAA/as

cc: Thomas Pearse

RECEIVED

NOV 0 6 2003

Per.....

ATTORNEY AND COUNSELOR AT LAW

29 WEST SUSQUEHANNA AVENUE SUITE 200 TOWSON, MARYLAND 21204 (410) 821-9632 FAX (410) 494-8067

May 14, 2003

Zoning Review
Department of Permits and Development Management
111 West Chesapeake Avenue Room 111
Towson, MD 21204

Re: 17022 and 17024 York Road

Dear Madam/Sir:

Enclosed you will find the following documents to be filed regarding the above-captioned property:

- 1 12 copies of a Petition for Special Hearing
- 2. 12 copies of Plat
- 3. 12 copies of Zoning Plat
- 4. Check in the amount of \$50.00 to cover the filing fee

Thank you for your attention in this matter.

Very truly yours,

John A. Austin

JAA/as

Enclosures

03-566-SPH

ATTORNEY AND COUNSELOR AT LAW

29 WEST SUSQUEHANNA AVENUE SUITE 200 TOWSON, MARYLAND 21204 (410) 821-9682 FAX (410) 494-8067

May 29, 2003

Zoning Review
Department of Permits and Development Management
111 West Chesapeake Avenue, Room 111
Towson, Maryland 21202

Attn: Donna

Re: 17022 and 17024 York Road

Dear Donna:

As you requested, enclosed you find a copy of the Last Will and Testament of Mary S.. Pearse, deceased, and of the Letter of Administration naming Thomas Pearse as the Personal Representative of the Estate of Mary S. Pearse. Enclosed also is my escrow account check in the amount of \$15.00 as the additional filing fee for the Petition for Special Hearing which I left with you. In addition, the names and addresses of the adjoining property owners are as follows:

- 1.17018 York Road Elwood Leight
- 2.17026 York Road Cindy Riley

If anything additional is required in connection with this matter, please contact me or Tom Church, and we will respond as may be needed.

Very truly yours,

Jahn Mustin

John A. Austin

jaa/hos

ATTORNEY AND COUNSELOR AT LAW

RECEIVED

SEP 0 FAX (410) 494-8067

29 WEST SUSQUEHANNA AVENUE SUITE 200 TOWSON, MARYLAND 21204

SEP 2 9 2003

September 24, 2003

John D. Murphy, Deputy Zoning Commissioner Baltimore County Zoning Office Suite 405 County Courts Building 401 Bosley Avenue Towson, MD 21204

Re: Petition for Special Hearing Case No. 03-566-SPH

Dear Mr. Murphy:

I am responding to your letter of August 4, 2003 regarding the above-captioned matter. The letter itself also forwarded a copy of the belated comments from R. Bruce Seeley of the Department of Environmental Protection and Resource Management. I am responding in this letter to the issues raised in your letter and also to the issues raised by Mr. Seeley's letter. In this regard, I have conferred with our engineer, Tom Church, regarding these issues and his thoughts on the matter are included in this response as well.

At the outset, the comments from Department of Environmental Protection and Resource Management were received only after you had made your decision to approve the requested relief. As you may recall, the relief that was sought was merely the creation of setback variances and the establishment of property lines formally dividing the property into two plots. As you will recall the testimony, the request was based entirely upon the existence of valid non-conforming uses with respect to the location of both houses on the property. As you may recall, testimony was presented indicating that the original house was built in 1938 and that the second house was built in the summer of 1960. It is plain, as you found, that there is a valid and existing non-conforming use with respect to the relief which was sought by the Petitioners in this matter and that they are therefore, entitled to an Order granting the relief sought. Nothing that was submitted by Mr. Seeley changes those issues.

To the contrary, DEPRM focuses solely upon the COMAR regulations as requiring a minimum area of 10,000 square feet, for the subsurface disposal of sewage. I have reviewed the COMAR regulations that they reference and it is plain that they apply prospectively only. There is nothing in these regulations that gives DEPRM, nor any other agency, the right to retroactively impose new or more stringent requirements upon a property owner with a septic system that has less than the minimum required area for subsurface sewage disposal. Indeed, the purpose of non-conforming uses is that they "grandfather" an existing septic system that, while adequate when it was built, may no longer be adequate due to changing requirements or regulations. It is clear moreover, that the Office of the Zoning Commissioner has the authority, when approving non-conforming uses, to approve them even though the existing configurations of the lot may not conform with current zoning standards. The same is true with the Health Department Standards as referenced in the COMAR regulations. In this regard, it is noted that there has not been any indication that there has been any problem with the septic systems serving these two houses, which have been occupied for a considerable period of time, a clear indication that the septic systems have been and will continue to be more than adequate for the purposes of serving these two

A careful examination of the COMAR regulations referenced by DEPRM indicates that DEPRM's reliance upon them is misplaced. At the outset, the definitions section of the COMAR regulations, 26.04.03.01 (16) defines a subdivision as follows:

"Subdivision': means the division of a single tract, tracts, or other parcels of land, or a part of it, into two or more lots, for the purpose, whether immediate or future, of sale or of the building development."

The definition of "lot" contained in this section is as follows:

" 9. 'Lot' means a part of subdivision or a parcel of land used as a building site or intended to be used for building purposes, whether immediate or future, which would not be further subdivided "

When these two definitional sections are examined, and compared to the present case, it is clear that neither of these two parcels meets the definition of lot because they are not used as a building site or intended to be used for building purposes, but rather have already been completely developed. These definitional sections need to be read in light of COMAR section 26.04.03.02(A) which provides as follows:

""A. Any developer or subdivider, contemplating the subdivision of land, before preparation of preliminary plan, may request a review by the approving authority and other agencies having jurisdiction to secure information concerning general requirements in the area in which the proposed subdivision is to be located."

As it can be seen, this language is entirely prospective in nature and applies only to proposed subdivisions including the building of dwellings that do not presently exist on lots that have not been created. The other sections cited by DEPRM's letter, COMAR section 26.04.03.03(1) are likewise prospective in nature and deal with the requirements for new construction and not for existing residences. As noted previously, the subject lots cannot be subjected to the requirements of 2003, many years after they were built, so as to impose upon them retroactively a requirement that did not exist at the time they were constructed. Their request also imposes a practical impossibility with respect to these lots, as there is not and never could be sufficient area on the lot to meet the 10,000 square feet requirement. While this requirement can be imposed on new building lots, it cannot be imposed retroactively upon existing houses. If this were not so, then literally thousands of septic systems throughout Baltimore County would have to be abandoned because they did not have this 10,000 square foot minimum area available to them.

Further, it appears that DEPRM's letter may have misunderstood the nature of the request and they perhaps believe that there is some sort of new subdivision plat that will be recorded. The plat that was submitted for the purposes of review, merely delineates the "as built" locations of the two dwellings and the new property line dividing the existing lot. In any event, DEPRM does not have the authority by virtue of the COMAR regulations to overrule your decision in this regard. Plainly, the authority of the Office of Zoning Commissioner flows from Baltimore Charter and the Baltimore County Code and this authority, of course, is granted to them by in turn, by the Annotated Code of Maryland and the Constitution of Maryland regarding the powers of Objection of DEPRM and to approve the new lots that will be created along with the setback variances and other relief sought in the original Petition.

A final point that should be considered by you is the unexplained delay by DEPRM in submitting their comments until the morning of the hearing. If they truly had a legitimate contention to be made in this regard, both myself and Mr. Church's identities were well known to them and they could have raised these issues in time for us to have addressed them or at least discussed them prior to the hearing. It apparently was not of sufficient concern to them for them to take this additional step, which is a circumstance that further undercuts the validity of their contentions. Additionally, COMAR regulation 26.04.03.05 grants the authority to grant variances with respect to area "if lot configuration and physical circumstances so require, ...providing that the public health is protected." Accordingly, there exists authority in the COMAR regulations to grant variances such as those requested. This is particularly applicable in the present case when the non-conforming use, which the Petitioners seek to have approved, does not pose any risk to the public health and never has.

For all of these reasons, we would simply ask that you pass an Order embodying your original decision, that is to approve the subject Petition, or to hold a further hearing wherein the comments of DEPRM can be subject to appropriate scrutiny and further testimony and evidence. Looking forward to hearing from you, I am

Very truly yours,

John A. Austin

JAA/as

CC:

Tom Church
Thomas Pearse

FRED H. DOLLENBERG PAUL G. DOLLENBERG CARL L. GERHOLD JOHN F. ETZEL PHILIP K. CROSS

HARRY W. KRAHN

DOLLENBERG BROTHERS

VALLEY 5-4470

Registered Professional Engineers & Land Surveyors

709 WASHINGTON AVENUE AT YORK ROAD

TOWSON, MD, 21204

December 13, 1966

Northernmost Lot

All that piece or parcel of land situate, lying and being in the Seventh Election District of Baltimore County, State of Maryland and described as follows to wit:

Beginning for the same in the center of the York Road at the beginning of the fourth line of a parcel of land which by a deed dated April 30, 1938 and recorded among the Land Records of Baltimore County in Liber C.W.B.Jr. No. 1028 folio 392 was conveyed by Emory C. Leight and wife to Thomas E. Pearse and wife and thence running with and binding on a part of said fourth line and running in the center of the York Road, South 4 degrees 35 minutes West 61 feet, thence leaving said road and outline and running for a line of division, binding for a part in or near the center of the existing 12 foot macadam drive constructed between the parcel of land herein described and the parcel of land adjoining on the south, North 86 degrees West 214.7 feet to a point on the west side of Green Alley and in the first line of the aforesaid parcel of land which was conveyed by Leight to Pearse, thence running with and binding on a part of said first line and on the second line of said parcel of land and binding on the west side of Green Alley, the two following courses and distances viz: North 3 degrees 55 minutes East 31.2 feet and North 37 degrees 45 minutes West 39.5 feet and thence leaving said alley and running with and binding on the third line of the aforesaid parcel of land which was conveyed by Leight to Pearse, South 86 degrees East 242 feet to the place of beginning.

Containing 0.31 of an Acre of land more or less.

Subject to and together with the right and use thereof in common with the owners of the lot of ground immediately adjoining to the south of the aforesaid existing 12 foot macadam drive.

Being a part of a parcel of land which by a deed dated April 30, 1938 and recorded among the Land Records of Baltimore County in Liber C.W.B.Jr. No. 1028 folio 392 was conveyed by Emory C. Leight and wife to Thomas E. Pearse and wife.

2

FRED H. DOLLENBERG PAUL O. DOLLENBERG CARL L. GERHOLD JOHN F. ETZEL PHILIP K. CROBS HARRY W. KRAHN

DOLLENBERG BROTHERS

VALLEY 3-4470

Registered Professional Engineers & Land Surveyors

708 WASHINGTON AVENUE AT YORK ROAD

TOWSON, MD. 21204

December 13, 1966

Southernmost Lot

All that piece or parcel of land situate, lying and being in the Seventh Election District of Baltimore County, State of Maryland and described as follows to wit:

Beginning for the same on the west side of Green Alley and at the beginning of a parcel of land which by a deed dated April 30, 1938 and recorded among the Land Records of Baltimore County in Liber C.W.B.Jr. No. 1028 folio 392 was conveyed by Emory C. Leight and wife to Thomas E. Pearse and wife and thence running with and binding on a part of the first line of said parcel of land and binding on the west side of said Alley, North 3 degrees 55 minutes East 61 feet, thence leaving said alley and outline and running to and binding for a part in or near the center of the existing 12 foot macadem drive constructed between the parcel of land herein described and the parcel of land adjoining on the north, South 86 degrees East 214.7 feet to a point in the center of the York Road and in the fourth line of the aforesaid parcel of land which was conveyed by Leight to Pearse, distant South 4 degrees 35 minutes West 61 feet measured along said fourth line from the beginning thereof, thence running with and binding on a part of said fourth line and running in the center of the York Road South 4 degrees 35 minutes West 61 feet and thence leaving said road and running with and binding on the last line of the aforesaid parcel of land North 86 degrees West 214 feet to the place of beginning.

Containing 0.30 of an Acre of land more or less.

Subject to and together with the right and use thereof in common with the owners of the lot of ground immediately adjacent to the north of the aforesaid existing 12 foot macadam drive.

Being a part of a parcel of land which by a deed dated April 30, 1938 and recorded among the Land Records of Baltimore County in Liber C.W.B.Jr. No. 1028 folio 392 was conveyed by Emory C. Leight and wife to Thomas E. Pearse and wife.

LAST WILL AND TESTAMENT

OF MARY STEWART PEARSE

KNOW ALL MEN by These Presents, that I, MARY STEWART PEARSE, an adult resident of and domiciled in Baltimore County, State of Maryland, and residing therein at 17024 York Road, Parkton, Maryland 21120, whose Social Security No. is 212-16-2647, being of sound and disposing mind, memory and understanding, and not acting under duress, menace, fraud, or undue influence of any person whomsoever, but being mindful of the uncertainty of this life, do make, publish and declare this as and for my Last Will and Testament, hereby revoking any and all Wills and Codicils heretofore made by me.

EIRST: I direct my Personal Representative, hereinafter named, to pay all my lawful debts (excluding any indebtedness secured by a mortgage or mortgages on real estate which is not due and owing at the time of my death and does not become due before the close of the administration of my estate), the expenses of my last illness, the expenses of the administration of my estate and my funeral expenses, the amount of the latter to be determined by my Personal Representative; all of the above is to be done without being subject to any limitation or restriction imposed by any law, and without the necessity for application to or leave of any Court for authority to do so.

SECOND: All of my estate and property, real, personal, or mixed, of whatever kind and wherever situate, including property over which I may have the power of appointment, I give, devise and bequeath in its entirety as follows:

1. To my granddaughter, CHRISTIE LaRAE WARNER, or her issue, per stirpes, and to my TRUSTEE hereinaster named, I give a portion of certain real property owned

HAS GAGES

LAW OFFICES

JEFFREY H. GRAY, P.A.

P.O. BOX 551

17000 YORK ROAD

MONKTON, MD 21111-0851

(410) 329-2104

Pet #

by me and described in a Deed dated April 30, 1938 and recorded among the land records of Baltimore County at Liber 1028, folio 392, said portion known as 17022 York Road, Parkton, Maryland 21120, and more particularly described on a letter dated December 13, 1966 from Dollenberg Brothers and identified as the "Southernmost Lot", as tenants in common.

- 2. To my son, THOMAS E. PEARSE, III, or his issue, per stirpes, I give a portion of certain real property owned by me and described in a Deed dated April 30, 1938 and recorded among the land records of Baltimore County at Liber 1028, folio 392, said portion known as 17024 York Road, Parkton, Maryland 21120, and more particularly described on a letter dated December 13, 1966 from Dollenberg Brothers and identified as the "Northernmost Lot".
 - 3. The rest, residue and remainder of my estate I give as follows:

Twenty-five percent to my son, Thomas E. Pearse, III, or his issue, per stirpes.

Twenty-five percent to my TRUSTEE hereinafter named, to be held in TRUST for the benefit of my daughter, Elizabeth Pearse Calp, and to be administered in accordance with the terms of that TRUST as hereinafter set forth, if said ELIZABETH PEARSE CALP survives me.

Twenty-five percent to my granddaughter, Christie LaRae Warner, or her issue, per stirpes.

Twelve and a half percent to my granddaughter, Diane M. Pearse.

Twelve and a half percent to my granddaughter, Lori A. Sheats."

4. Should my daughter, ELIZABETH PEARSE CALP, predecease me or fail to survive me by thirty (30) full days, then the share that would have been distributed to my

LAW OFFICES

JEFFREY H. GRAY, P.A.

P.O. BOX 551

17000 YORK ROAD

MONKTON, MD 21111-0551

(410) 329-2104

TRUSTEE will instead be distributed to the remaining individuals listed in sub-paragraph No. 4, prorata, in proportion to their respective interests in the whole residuary estate.

THIRD: I hereby nominate, constitute and appoint THOMAS E. PEARSE, III residing at 1601 Mt. Carmel Road, Parkton, Maryland 21120, as Personal Representative of this my Last Will and Testament, and should be predecease me or be unwilling to serve as appointed, then I do hereby nominate, constitute and appoint CHRISTIE LaRAE WARNER residing at 30 Circle Drive, Glen Rock, Pennsylvania 17327, as Personal Representative of this my Last Will and Testament. I direct that no bond be required of my said Personal Representative for the faithful performance of duties as such, and my Personal Representative shall not be liable for any act or omission which does not constitute fraud or willful misconduct nor shall be be compelled, except for the purpose of paying death taxes, to make any inventory of my estate or to account for his administration thereof in any manner or form.

FOURTH: I hereby confer upon my Personal Representative all powers necessary for and proper to the administration of my estate (all of which powers may be exercised without prior application to or subsequent by the Orphans' Court of Baltimore County or any other Court which may have jurisdiction over the administration of my estate) including but not by way of limitation, the following powers: I authorize and empower my Personal Representative in his full and absolute discretion, to sell at public or private sale, deed, assign, mortgage, lease, reinvest and otherwise deal in, for such consideration and upon such terms as he may deem proper, all or any part of my property, real, personal, or mixed, which may be expedient for the purpose of paying any of the debts, costs of the administration of or any and all taxes upon my estate, or for the purpose of making a division thereof, or for any other purpose

JEFFREY H. GRAY, P.A.
P.G. BOX 581
17000 YORK ROAD
MONKTON, MD 21111-0581
(410) 329-2104

which he may deem to be advantageous to the administration of my estate, and no purchaser shall be bound to see to the application of the purchase price; I further authorize my Personal Representative to retain any asset which I may own at the date of my death until such time as he, in his sole discretion, shall determine to sell or otherwise dispose thereof; I further expressly authorize my Personal Representative to invest and reinvest funds in such investments, including preferred and common stock, as he may deem advisable, without restriction by statute, rule of law, or Court or practice governing the diversification or investment of trust funds and to hold funds uninvested if in his discretion it is advisable to do so; I further expressly authorize my Personal Representative to compromise and settle any claims, debts, or obligations against or owing to my estate, and, as to any investment held by him, to vote in person or by general or limited proxy, to join in, consent to or oppose any debt agreement, reorganization, merger, dissolution, liquidation or other adjustment of capital funds or indebtedness, to pay any assessment levy and to exercise any option or right in connection therewith without liability for loss by reason of such activity. In any case in which my Personal Representative may be required either under the provisions of this Will, or in order to make a proper distribution of my estate, to divide the assets of my estate, I hereby authorize him to make such division in any part in cash or in kind and any division so made by him shall be binding and conclusive upon all persons interested in my estate. It is my intention that the enumeration of the above powers shall not in any way limit the exercise by my Personal Representative of any other powers conferred upon him by custom, common law or statute. All powers and immunities hereby conferred upon my Personal Representative shall be appurtenant to the office and shall devolve upon surviving or succeeding Personal Representatives acting hereunder.

LAW OFFICES
JEFFREY H. GRAY, P.A.
P.O. BOX 551
17000 YORK ROAD
MONKTON, MD 21111-0551
(410) 929-2104

FIFTH: In the event that, pursuant to the provisions of this Will, any minor child shall become a beneficiary of all or part of my estate, then said gift, devise or bequest to such minor shall be made under the Maryland Uniform Transfers to Minors Act unless otherwise provided in this Will. If it is necessary for a custodian to be named for any aforesaid gift, devise or bequest to a minor, then I direct that my Personal Representative be named as such.

SIXTH: I hereby appoint THOMAS E. PEARSE, III residing at 1601 Mt.

Carmel Road, Parkton, Maryland 21120, as TRUSTEE for my said daughter, ELIZABETH

PEARSE CALP, until distribution under this Will. I do hereby give, devise, bequeath and
appoint that portion of my estate to be distributed for her benefit at the time of my death, real,
personal, or mixed, of whatever kind and wherever situate, including property over which I may
have the power of testamentary appointment, unto THOMAS E. PEARSE, III, or his
successors, as TRUSTEE, to have and to hold the same IN TRUST for said her for the
following purposes, with the following powers and duties and pursuant to the following
conditions:

GENERAL PROVISIONS

- 1. My TRUSTEE shall hold and administer my estate for the sole use and benefit of my daughter and in the manner hereinafter provided.
- 2. I further provide that my TRUSTEE may act without giving bond in any jurisdiction and that he shall not be compelled, except for the purpose of paying death or other taxes, or except as may be required by Order of Court, to make any inventory of my estate or account for his administration thereof in any manner or form.
 - 3. I give my TRUSTEE the full power of sale over any property, real, personal,

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or mixed, and the right to invest and reinvest the corpus and income of my estate in any manner in which he shall see fit and without regard to any provisions of law relating to the investment of trust funds.

- 4. My TRUSTEE shall in his discretion from time to time pay over and/or distribute part or parts or the whole net income of any such TRUST and/or part or parts of the whole principal of any such TRUST to any such beneficiary for whom such share of my estate is being held in trust, provided, however, that no amount of principal shall be distributed in part or whole unless all of the income available in the applicable fiscal year is distributed first, and unless the unavailability of income is due to unusual or extraordinary expenses which may be incurred as a result of illness, accident or other emergency. In the event that any of the expenditures from either income or principal are recovered by my TRUSTEE through insurance or any other source, then any amounts so recovered shall be restored by him to the income or principal as the case may be. Any income remaining unspent at the close of the fiscal year, shall be added to the principal.
- 5. All distributions made pursuant to the provisions of this TRUST, or pursuant to this Will as may pertain to my child or children, shall be made in such amounts, in such proportions and at such times as my TRUSTEE may deem best for the support, maintenance, education, best interest and general welfare of my daughter.
- 6. Upon my daughter's death, my TRUSTEE shall terminate the TRUST and distribute the principal and any accumulated income in share or shares as set forth in subparagraph No. 4 of Paragraph No. SECOND.

SEVENTH: I have, except as otherwise provided in this Will, intentionally, and

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with full knowledge, omitted to provide for my heirs who may be living at the time of my death, including any person or persons who may become my heir or heirs by reason of marriage or otherwise, AND SPECIFICALLY, under no circumstances is any portion of my estate to be distributed to Heather L. Calp, nor is she to be considered an "heir at law" for the purposes of the administration of my Will.

EIGHTH: All the rest, residue and remainder of my property, real, personal, or mixed, of whatever kind and wherever situate, which I shall own at the time of my death and which does not pass pursuant to the foregoing terms of this Will, I give, devise, bequeath and appoint to my remaining heirs at law.

IN TESTIMONY WHEREOF, I have hereunto signed my name and affixed my seal this 24 day of April, in the year One Thousand Nine Hundred Ninety-Six.

The foregoing instrument, contained on this and the six (6) preceding typewritten pages, was on the aforesaid date SIGNED, SEALED, PUBLISHED and DECLARED by the said MARY STEWART PEARSE, the Testatrix named therein, as and for her Last Will and Testament, in the presence of us, who, at her request, in her presence and in the presence of each other have hereunto subscribed our names as witnesses, having also seen the said

Testatrix's initials written by her on the margin of each of the first six (6) pages hereof.

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Witness

(410) 329-2104



State of Maryland LETTERS OF ADMINISTRATION

| Estate No. 119388 | i |
|---|-------|
| *** | |
| I certify that administration of the Estate of MARY STEWART PEARSE | |
| was granted on the 31st day of January, 2002 | · |
| to THOMAS E PEARSE III | |
| as personal representative(s) and the appointment is in effect this 31st day of January, 2002 Will probated 01/31/2002 [date] Intestate estate. GRACE G. CONNOLLY Register of Wills for | 500 |

RW 1120

VALID ONLY IF SEALED WITH THE SEAL OF THE COURT OR THE REGISTER

| | GREEN | / · | 3/2' ALLEY | g be | Wolf N | |
|--|-------------|--------------------|--------------------------------|-------------------|--------|--|
| PROPERTY OF MRS THOMAS E. PEARSE LOCATED IN HEREFORD 7TH DIST. BALTIMORE G. MD | N. 86°W 214 | AREA = 0.30 ACRE ± | A Muchan Drive (use in common) | AREA = C.31 ACRET | | |
| SCALE: 1:20 DEC 12, 1966 SURVEYORS & CIVIL ENGRS TOMH: Carmel | YORK | 6/ | 4°-35' W | 60/° | | |

