



## Board of Appeals of Baltimore County

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November 17, 2023

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RE: In the Matter of: *Mark Krebs and Jane Drozinski, Personal Representatives  
of the Estate of Betty Krebs, Petitioners*  
Case No.: 22-152-SPHA

Dear Counsel:

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

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*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all **Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in blue ink that reads "Sunny Cannington Hay".

Krysundra "Sunny" Cannington  
Legal Administrative Secretary

KLC/taz  
Enclosure  
Duplicate Original Cover Letter

c: See Distribution List Following

In the Matter of: Mark Krebs and Jane Drozinski, Personal Representatives  
of the Estate of Betty Krebs

Case No.: 22-152-SPHA

November 17, 2023

Distribution List

Mark Krebs and Jane Drozinski

Radoslav Tsanev

Maggie Flick

Wayne Martin

Maureen E. Murphy, Managing Administrative Law Judge

Stephen Lafferty, Director/Department of Planning

C. Pete Gutwald, Director/PAI

James R. Benjamin, Jr., County Attorney/Office of Law

IN THE MATTER OF	*	BEFORE THE
MARK KREBS AND JANE DROZINSKI	*	BOARD OF APPEALS
PERSONAL REPRESENTATIVES OF	*	
THE ESTATE OF BETTY KREBS		
PETITIONERS FOR SPECIAL HEARING	*	OF
AND VARIANCE ON THE PROPERTY		
LOCATED AT 16809 RIDGE ROAD	*	BALTIMORE COUNTY
5 <sup>TH</sup> ELECTION DISTRICT	*	CASE NO.: 22-152-SPHA
3 <sup>RD</sup> COUNCIL DISTRICT		

\* \* \* \* \*

### OPINION

This case comes before the Board of Appeals of Baltimore County ("Board") as an appeal filed by Mark Krebs and Jane Drozinski ("Petitioners"), of a September 1, 2022 Opinion and Order from Administrative Law Judge Paul Mayhew denying the Petition for Special Hearing pursuant to Baltimore County Zoning Regulations ("BCZR") §500.7 to approve a non-conforming lot created on July 6, 1961, and Petition for Variance pursuant to BCZR §1A01.3.B.2 to permit a lot with an area of 0.67 of an acre in lieu of the required 1 acre.

By request of the parties, the *de novo* hearing was held in person before this Board on August 1, 2023. Lawrence E. Schmidt, Esquire of Smith, Gildea and Schmidt, appeared on behalf of the Petitioners. Deputy People's Counsel, Carole S. Demilio Esquire, appeared on behalf of People's Counsel for Baltimore County. Also appearing in opposition of the Petitions was adjacent property owner, Wayne Martin. At the beginning of the hearing, the Petitioners abandoned the Petition for Variance, and sought, solely, the Petition for Special Hearing. A public deliberation was held on October 24, 2023 via Webex.

### INTRODUCTION

The Petitioners are seeking permission to build a single-family home on an unimproved property located between 16805 Ridge Road and 16811 Ridge Road, a residential street

intersecting with Black Rock Road ("Subject Property"). The Subject Property is 0.714 acres in gross area, zoned R.C.2.

### STIPULATED FACTS

In the interest of judicial economy People's Counsel and Counsel for the Petitioners stipulated to the following facts:

1. The subject site is not part of any development or subdivision plan, whether prior to or subsequent to 1956.
2. The subject site is not a single-family lot duly recorded by deed nor in a validly approved subdivision prior to March 30, 1955.
3. The homes constructed on the surrounding sites (16805, 16811, 16815, 16819 Ridge Road) were constructed in the 1960's, prior to the zoning regulations requiring one-acre minimum lots (RDP in 1971 and R.C.2 in 1975). While they can remain because legally constructed, the lot sizes are undersized under the R.C.2 standards.
4. There is no evidence the subject site sought or was granted a building permit or approval from the agencies (such as County Health Department approval for utilities and services) in effect at any time in its history to current.
5. The subject site was calculated at 0.675 acre (Petitioner's Site Plan) or 0.714 (SDAT) neither of which meets the current R.C.2 one-acre minimum requirement.
6. The subject site is located in the 5<sup>th</sup> District. The applicable zoning history is:
  - (a) 1945 - "A"
  - (b) 1955 - "A" became R 6 by virtue of BCZR's statutory conversion
  - (c) 1971 - Rural Planning Deferred (RDP) rezoning by County Council and codified in BCZR
  - (d) 1975 - Resource Conservation 2 (R.C.2) Enactment of zone by County Council and Mapping
  - (e) 1979 - R.C. Zones codified in BCZR
7. The subject site's **deed history** is as follows:
  - (a) 10-21-1954 Deed to Raymond and Rachel Armacost ("Armacosts" maternal grandparents of Petitioner) 3.829 acres via survey out of other parcels
  - (b) 8-9-1956 Deed from Armacosts to Wallace & Betty Krebs, parents of Petitioner, .828 acres via survey out of 3.829 parcel. 16805 Ridge Road
  - (c) 2-6-1961 Deed from Armacosts to Silas and Mary Martin 1.458 acres via survey out of 3.829 parcel above. 16811 Ridge Road

- (d) 11-5-1962 Deed from Armacosts to Silas and Mary Martin .821 acres via survey out of 3.829 parcel above. 16815,16819 Ridge Road
  - (e) 2-28-1973 Deed from Armacosts to Wallace and Betty Krebs via survey and the remaining land (subject site) from the original 3.829 parcel above. Unimproved
8. Petitioner's Plat states the proposed single-family dwelling complies with the front, side and rear setbacks required under the current R.C.2 zoning regulations.

### ANALYSIS

A special hearing is effectively a declaratory judgment proceeding to determine issues of zoning law. *Antwerpen v. Baltimore County* 163 Md. App. 194, 209 (2005). The essence of the issue to be determined in this matter is the interpretation of the language found in BCZR §1A.01.3.B.2.

Regarding height and area regulations in the R.C.2 zone, BCZR §1A.01.3.B.2 states: "A lot having an area less than one acre may not be **created** in a R.C.2 zone." (emphasis added) As stipulated by the parties, the property at issue clearly falls short of the one-acre requirement. Petitioners argue that the one-acre requirement does not apply to the proposed development due to their contention that no new lot is being "created" as stated in BCZR §1A.01.3.B.2, in that the lot was already in existence since 1961. People's Counsel argues that this interpretation of the term "created" is erroneous and confounds common sense.

As provided in BCZR §101.1 any word not expressly defined in the BCZR shall be defined as stated in Webster's Dictionary. According to Webster's, "created" is defined as "to bring into existence" or "to produce." As outlined by the Petitioners, following the conveyance of the lot known as 16805 to the Krebs in 1956 and the conveyance of the 1.458-acre lot to the Martins in 1961 (which became 16811 and 16815 when houses were built thereon) the subject Property was "brought into existence." It became (as defined in BCZR) a "Lot of Record." A

Lot of Record is “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 regulation which governs the use, subdivision or other condition thereof.” (BCZR §101.1.) The Property’s boundaries were established when the conveyances of the lots on both sides were made.

The tenets of statutory construction dictate that the words in any statute be interpreted based upon their clear meaning and that words be given their ordinary effect and not be considered surplusage. *See, e.g., City of Balt. Development Corp v. Carmel Realty Assocs.* 395 Md. 299 (2006). Petitioner contends that if the word “created” in BCZR §1A01.3.B.2 was not afforded a literal interpretation, it would be meaningless and superfluous. In short, if the legislature had not intended that word to have its clear meaning and effect, then it would not have been used.

While a variety of theories could be extrapolated as to the legislative intent behind BCZR §1A01.3.B.2, an investigation of such theories is only warranted when there is ambiguity as to the meaning of a statute.

If statutory language is unambiguous when construed according to its ordinary and everyday meaning, then we give effect to the statute as it is written. If there is no ambiguity in that language, either inherently or by reference to other relevant laws or circumstances, the inquiry as to legislative intent ends; we do not need to resort to the various, and sometimes inconsistent, external rules of construction, for the Legislature is presumed to have meant what it said and said what it meant.

*Chow v State*, 393 Md. 431, 443-44 (2006) (quoting *Kushell v. Dept. of Natural Resources*, 385 Md. 563, 576-77 (2005))

People’s Counsel contends that the language of BCZR §1A.01.3.B.2 is “ambiguous” in that the term “created” cannot be logically afforded its literal interpretation. People’s Counsel notes that when BCZR §1A04.3.B.1.b. regarding the R.C.5 zone was amended in 2004, specific

exceptions were added for lots not meeting the 1 ½ acre requirement.<sup>1</sup> Since statutory language for R.C.5 area requirements also included the term “created,” People’s Counsel argues that such exceptions would not be necessary if the term “created” were to be afforded a literal interpretation. While this argument has merit, an opposite inference from this amendment is that the County Council could have also included such an amendment to the R.C.2 area requirements and did not, thus leaving the term “created” in the R.C.2 area requirements to be unqualified in its literal meaning.

While not dispositive, guidance as to the legislative intent of BCZR §1A01.3.B.2 may be extrapolated from “Legislative statement of findings” prefacing BCZR §1A01 addressing the R.C.2 (Agricultural) zone. This statement reads:

**§1A01.1. - General provisions.**

**A. Legislative statement of findings.**

1. Declaration of findings. It is found:
  - a. That Baltimore County is fortunate in that it is endowed with a variety of very productive agricultural soil types which should not be lost unnecessarily to urbanized development;
  - b. That the agricultural industry is an integral part of the Baltimore economy and that a continued conversion of agricultural land will continue to undermine this basic industry;
  - c. That scattered development is occurring in a sporadic fashion in areas of Baltimore County containing productive agricultural land;
  - d. That continued urban intrusion into productive agricultural areas not only destroys the specific area upon which the development occurs but is incompatible with the agricultural use of the surrounding area;

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<sup>1</sup> BCZR 1A04.3.B.1.b. in the R.C.5 zone only, provides two specific exceptions to minimum lot size when the County Council, upon enacting Bill 152-2004, raised the minimum size from 1 acre to 1 ½ acres:

“The owner of a single lot of record that is not a subdivision and that is in existence prior to September 2, 2003, but does not meet the minimum acreage requirement, or does not meet the setback requirement of Paragraph 2, may apply for a special hearing under Article 5 to alter the minimum lot size requirement. However the provisions of Section 1A04.4 [Performance Standards] may not be varied.”

(The second exception pertains to growth allocation sites under the Baltimore County Code and allows a reduction to 1 acre under certain conditions not applicable in this case.)

- e. That heretofore Baltimore County has been unable to effectively stem the tide of **new residential subdivisions** in productive agricultural areas of Baltimore County;
  - f. That Baltimore County has certain wetlands along Chesapeake Bay and its tributaries which serve as breeding grounds and nursery areas for the bay's biotic life; and
  - g. That Baltimore County possesses numerous areas which are highly suitable for urban development, including **residential subdivisions** which are not located in areas of productive agricultural land.
- B. Purposes. The R.C.2 zoning classification is established pursuant to the legislative findings above in order to foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses.

BCZR §1A01.1 (Emphasis Added).

An examination of this statutory language infers that the primary focus of this legislation was the prevention of sprawling **residential subdivisions** in agricultural areas. As noted by the Petitioners, no subdivision is proposed on the Subject Property. Absent from his statement of "Legislative statement of findings" is language inferring that the prevention of a single dwelling on a lot under an acre was a legislative point of concern.

Despite assertions to the contrary, The Board finds that the literal interpretation of the term "created," is in fact logical when interpreting the legislative intent of BCZR §1A01.3.B.2 and finds no reason to disregard its clear meaning. If it were the legislative intent to preclude all development in lots less than one acre in the R.C.2 zone, more precise language was available to meet that end. Such a more precise choice of terms can be found in the statutory language governing area regulations in the R.C.3 zone, which in pertinent part, states the following:

BCZR §1A02.3

- b. Area regulations.
  - 1. Cluster development. **Residential development** shall be permitted in the R.C.3 zone classification on lots not less than one acre in area . . .

In this instance, by including the term “residential development,” it is clear as to what the statute is prohibiting on lots with area less than one acre. Such language was not included in the acreage requirements for the R.C.2 zone. By using the term “created” for lot size requirements for the R.C.2 zone, it is logically inferred that already “created” lots were not to be governed by the one-acre requirement.

People’s Counsel argues that giving the term “created” a literal interpretation is nonsensical and would suggest that properties can never be downzoned. A rational review of the very fact-specific circumstance of this matter reveals that such a forecast of the demise of future zoning legislation and enforcement is hyperbole. In order for other properties to fall under this exception to the one-acre lot requirement in the R.C.2 zone, the property must have been a lot of record before 1978 and meet all other requirements for development in the R.C.2 zone. Almost 45 years have passed since this legislation went into effect, and the number of remaining lots of record fitting this description are most likely finite.

### ***Merger***

During the hearing before the Board, People’s Counsel raised the issue of “merger” asserting that the Subject Property cannot be built upon because it has merged with the adjacent lot at 16805 Ridge Road. The concept of zoning merger was addressed in *Friends of the Ridge v. Balt. Gas & Elec. Co.* 352 Md. 645 (1999). In that matter, BGE owned multiple lots within a single tract which was the location of an electric substation. BGE sought to enlarge the substation and requested zoning variances to the internal lot lines. The Court of Appeals held that zoning variances were not required as the lots had “merged” for zoning purposes and setbacks to the interior lot lines were not required.

In *Mueller v. People's Counsel*, 177 Md. App. 43 (2007), the court discussed how the intent of the property owner could be ascertained in determining if there was a merger. The Court held that factors evidencing merger included whether there were any permanent structures (e.g., swimming pool, garage, shed) on the lot serving the lot on which the primary residence was built. *Mueller*, at 88.

Mr. Krebs testified before the Board that the Subject Property has never been used to serve the 16805 lot. He confirmed that there had never been a driveway, or any other permanent structures built upon the property. Additionally, the lots have always been taxed separately and considered as separate parcels. Applying this testimony and the lack of evidence to the contrary to the factors for consideration provided in *Mueller*, the Board finds that the Subject Property has not merged with the adjacent lot at 16805 Ridge Road.

### CONCLUSION

The Board finds the term "created" found in BCZR §1A.01.3.B.2 is unambiguous. Consequently, the tenets of statutory construction dictate that the term must be afforded its literal meaning. When reading BCZR §1A.01.3.B.2 in such a light, it is clear that the Petitioners are not proposing the creation of a lot less than one-acre, in that the Subject Property already exists as a lot of record. Accordingly, the development of this lot in keeping with all other R.C.2. zoning requirements is permitted. Additionally, when applying the facts regarding the use history of the Subject Property to the holding in *Mueller*, the Board finds that the Subject Property has not merged with the adjacent lot at 16805 Ridge Road.

In the matter of: Mark Krebs and Jane Drozinski  
(Estate of Betty Krebs)  
Case No.: 22-152-SPHA

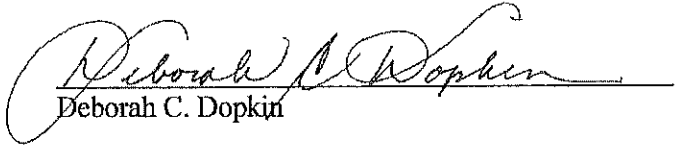
**ORDER**

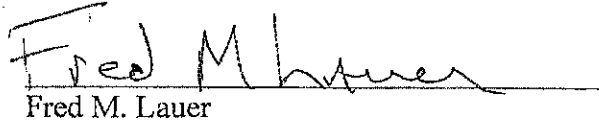
**THEREFORE**, it is this 17th day of November, 2023, by the Board of Appeals for Baltimore County:

**ORDERED** that the Petition for Special Hearing pursuant to BCZR §500.7 to approve a non-conforming lot which was created on July 6, 1961 is hereby **GRANTED**.

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.

**BOARD OF APPEALS FOR  
BALTIMORE COUNTY**

  
Deborah C. Dopkin

  
Fred M. Lauer

Andrew M. Belt was the Panel Chair at the time of the hearing and public deliberation. Mr. Belt left the Board effective November 13, 2023.