

May 25, 2009

Joseph Tassone
Director, Environmental Planning
Maryland Department of Planning
301 W. Preston Street
Baltimore, MD 21201-2365

Re: Queen Anne's County Zoning

Dear Mr. Tassone:

Representatives of Queen Anne's Conservation Association (QACA) attended the Maryland Department of Planning presentation of certain "Talking Points" to the Queen Anne's County Commissioners on May 12, 2009. We noted with particular interest your Department's stated concern about County farmland's "vulnerability to further residential development under clustering and NCD options" (Talking Points, page 2).

QACA, which very much shares your concerns, has been monitoring local developers' utilization of these two options for a number of years. In this communication we would like to share with you a portion of our analysis as it pertains specifically to issues focused on in the MDP Talking Points.

The second Map attached to the Talking Points identifies compromised or at-risk agricultural areas impinging on a large preserved area in northern Queen Anne's County (Chino Farm on Route 544). Near the center of this Map is a 25-lot subdivision with access from Leverage Road. This is "Blakefield", a recent project of the Caddell-Grimes Mid-Shore Development Company.

The Blakefield development makes use of the provisions in Queen Anne's County zoning law awarding bonus density for clustering ("CDB") and allowing development rights from two or more separate properties to be consolidated and exercised on a single property ("NCD").¹ What our analysis of Blakefield

¹ As you know, Queen Anne's County zoning law allows a density of one house per 8 acres for single-family cluster developments in the Agricultural (AG) District (Chapter 18:1-14.D.(1)(a)) and one house per 5 acres in the Countryside (CS) District (§18:1-15.D.(1)(c)). In this communication, we refer to these two provisions as the "cluster density-bonus", or **CDB**. The so-called "noncontiguous development technique" allows the development options on two or more separate parcels to be aggregated and realized on a single parcel. It is also available to developers in both the AG and CS Districts (§18:1-14.D.(1)(d) and §18:1-15.D.(1)(e)) and is referred herein by its popular acronym, **NCD**.

provides is insight into how these provisions, taken together, not merely allow, but actually encourage, rural sprawl developments, with all their well-known adverse economic and environmental effects. Such developments have become sufficiently common in Queen Anne’s County that they now have their own local name: "cornfield villages".

If CDB and NCD do not come into play, the maximum residential density in the AG District, where Blakefield is located, is one house per 20 acres.² Accordingly, to create a 25-lot subdivision without using CDB or NCD, a cornfield village developer would have had to purchase a 500-acre parcel. In 2005, when the Blakefield property was purchased by Mid-Shore Development, large farms in the County (over 100 acres) were selling at an average of about \$6,000 per acre (according to research we have sponsored), implying a land acquisition cost for the developer of \$3 million, or \$120,000 per lot. A land cost of this magnitude obviously would have made a 25-lot subdivision like Blakefield (and most other cornfield villages of various sizes in this County) economically unfeasible (which, of course, is why 1/20 or 1/25 agricultural zoning tends to protect farmland from being lost to sprawl development).

What is instructive is to look at how the Blakefield economic equation, and therefore the likelihood of this particular cornfield village actually occurring, changes as CDB and NCD are introduced into the picture. First,

Table 1: Generic Subdivision in AG District - 25 units		
	Conventional Development	Cluster Bonus Development
Number of Units:	25	25
Acres Required per Unit	20	8
Total Acres Needed	500	200
Land Cost per Acre (2005)	\$6,000	\$6,000
Total Land Cost for Acreage Needed	\$3,000,000	\$1,200,000
Land Cost per Unit	\$120,000	\$48,000

² This is slightly over-simplified, because it ignores the “sliding-scale subdivision technique”, another dilution of the basic 1/20 AG and CS zoning. This option, which is additive to all other options, awards one new lot up to the first 100 acres of a site, and one more lot for each additional 100 acres or part thereof: see §§18:1-14.D.(1)(c) and 18:1-15.D.(1)(d) .

CDB, allowing a density of 1/8, allows 25 units to be built on only 200 acres (= 25 x 8). That reduces the land acquisition cost (in 2005) to \$1.2 million (= 200 x \$6,000), or \$48,000 per lot. At this price point, a much larger number of rural sprawl developments become economically feasible, at least in a good housing market. In fact, in Queen Anne's County, a number of recent cornfield villages (e.g., Willow Branch North, Hambleton Creek Farm) have been developed using only CDB and not NCD (so-called "by-right" developments). One cannot be certain whether the Blakefield developer would have gone forward with a sprawl development (at another site larger than the Blakefield parcel) if only CDB were available, but with the addition of NCD the Blakefield transaction itself obviously became irresistible, as we will now see.

Blakefield is a 58-acre parcel, for which the developer actually paid what appears on its face to be a quite generous price: \$534,500, or \$9,200 per acre.³ Without NCD, the parcel would have accommodated only 8 lots -- 7 "by-right" under CDB, plus one sliding-scale lot (see footnote. 2, above). With NCD, however, the developer was able to create 17 additional lots by purchasing development rights from other (noncontiguous) AG parcels and exercising these rights on the developed parcel, Blakefield.⁴ The Blakefield developer has testified (before a County panel studying rural zoning) that the purchase price for the development rights was about \$15,000 per right, or \$255,000 total (17 x \$15,000). Added to the purchase price of the Blakefield parcel itself, the NCD rights purchase brings the developer's total land acquisition cost to \$789,000 (\$534,000 + \$255,000), or \$31,560 per lot ($\$789,000 \div 25$).⁵

³ The excess of this price over the 2005 average price for large (>100 acres) farms may have been attributable either to the ordinarily higher per-acre prices of smaller parcels as compared to larger parcels, or to particular characteristics of this parcel that made it especially desirable (e.g., proximity to the largest area of preserved land in the County). A further contributing factor could have been the developer's ability, based on the availability of CDB/NCD, to make an exceptional offer in order to induce a less-than-willing seller to part with the property.

⁴ The requirements of the NCD technique are set out in Chapter 18:1, Part 6, Article XIX of the County zoning law. These include the requirement that only 50% of the developed parcel is to be built out, with the remainder retained as open space. §18:1-98.B. Density on the developed parcel as a whole may be as little as 0.9 units per acre (§18:1-98.D.(1)), but in practice current septic reserve requirements set the minimum lot size at slightly above one acre.

⁵ In an important sense, this figure somewhat overstates the Blakefield land acquisition cost. While a developer presumably pays "up front" for the land itself, he does not, according to

Table 2: The Blakefield Subdivision in AG District - 25 Units

Number of Units By-Right - Sliding Scale	1
Number of Units By-Right - CDB	7
Number of Units From Transfer Rights - NCD	17
Total Units in Development	25
Cost of 58-Acre Parcel	\$534,500
Cost of Transfer Rights @ \$15,000 / Right	\$255,000
Total of Parcel Cost and Transfer Rights Cost	\$789,000
Land Cost per Unit	\$31,560

As the foregoing analysis shows, NCD made Blakefield happen. If it took a purchase price of \$534,500 to get that 58-acre parcel into the hands of a developer, would a developer have been interested if he could only create 8 lots (under CDB and sliding scale)? His per-lot cost would then have been a relatively unattractive \$66,813 per lot ($\$534,500 \div 8$), as opposed to the \$31,560 he could achieve with NCD. And with NCD he was able to develop 25 lots instead of just 8, allowing him to achieve scale economies in other overhead items like engineering costs and legal fees, as well as holding out the prospect of a much bigger payday on a much larger project.

Without NCD, would the Blakefield developer have looked for another parcel for his cornfield village? As noted above, one cannot be sure, because by utilizing CBD without NCD, in 2005 a developer could have hypothetically done a 25-unit subdivision on a different, larger parcel for a land cost of about \$48,000 per lot – which might or might not have been economically feasible. What one can say with confidence is that under 1/20 zoning, and a per-acre land cost in 2005 of \$120,000 per lot, the likelihood of a Blakefield anywhere in the County’s AG district would have been vanishingly small. Conversely, when NCD on top of CDB allows a developer to produce lots at under \$32,000 in land costs per lot, then the likelihood of Blakefields is greatly increased.

Moreover, in considering the foregoing analysis, one should remember that the Blakefield example is really a best-case scenario for anyone resisting the conclusion that Queen Anne’s AG zoning encourages sprawl development. Larger farmland tracts were, as noted above, available for purchase in 2005 at an

our information, typically pay for the NCD rights until the lots which they create are sold. NCD rights sellers appear to be willing to wait to be paid (probably because the sale of the right makes no difference in the use they are making of their land), and the delay in payment is obviously economically beneficial to the developer

average of \$6,000 per acre, well below the \$9,200 per-acre price that the developer paid for the smaller Blakefield parcel. Thus, a developer willing to go after a somewhat larger project, say 45 units, might have purchased a 100-acre farm for \$600,000, which would have enabled him to create 12 CDB lots plus one sliding-scale lot and then to buy in the rights for 32 NCD lots for \$480,000. In a project of this size, CDB and NCD would have thus enabled him to further reduce his per-lot land costs to \$24,000 ($\$1,080,000 \div 45$) – 24% less than the per-lot cost that sufficed to make Blakefield happen.

Table 3: Larger-Parcel Generic Subdivision in AG District - 45 units

Number of Units by Right - Sliding Scale	1
Number of Units by Right - CDB	12
Number of Units from Transfer Rights -NCD	32
Total Units In Development	45
Cost of 100-Acre Parcel @ \$6,000 / acre	\$600,000
Cost of Transfer Rights @ \$15,000 / Right	\$\$480,000
Total of Parcel Cost and Transfer Rights Cost	\$1,080,000
Land Cost per Unit	\$24,000

In conclusion, we would like to make two additional points.

First, we note that the Talking Points indicate MDP’s interest in understanding “how useful for agriculture the deed restricted open space and noncontiguous open space parcels are” (page 1). QACA urges MDP to continue this investigation. It is our conclusion, based on examining numerous rural sprawl developments in the County, that in their overall effect CDB and NCD tend to encourage the development of the more farmable land and/or make that land more difficult to farm by virtue of the configuration of the open space and its proximity to residential development. Concurrently, it is the less farmable land that is being deed restricted under CDB and NCD, because it is such land from which the NCD rights are being sent or which is being allocated to open space in the development.⁶ This “big picture” of the pernicious effects of CDB/NCD is one that we hope MDP will aggressively seek to acquire.

Second, NCD helps explain why Queen Anne’s County is so far behind its neighbors Kent, Caroline and Talbot in the achievement of protective agricultural zoning. Purchases of NCD rights by developers have provided

⁶ See also footnote 8 below re fragmentation of open space on noncontiguous parcels.

payments to some farmland owners that we estimate in the aggregate to have approached \$1 million per year.⁷ These payments, both those that have occurred and those that are anticipated, have created a natural economic alliance between some farmland owners and local sprawl developers that, in a tight-knit agricultural community, has deterred the emergence of any farmland-owner-led initiatives for more protective agricultural zoning (as have occurred in the neighboring counties).⁸ In Kent, Caroline and Talbot, farmers have not experienced a “loss of equity” from the 1/20 or 1/30 agricultural zoning that some of them sought and most now support. Queen Anne’s County farmers know what has happened in the neighboring counties, but many nevertheless purport to fear terrible economic harm from any reform of zoning here. NCD provides the key for understanding this phenomenon.

QACA wishes to express its thanks to MDP for recognizing the need for Queen Anne’s County to address the challenge it faces, insurmountable under its existing zoning law, in trying to protect its farmland and agricultural economy from destruction by rural sprawl. We will be happy to provide any further assistance we can in support of the Department’s effort to understand the actual situation here on the ground.

Sincerely,



Richard S. Altman

QUEEN ANNE’S CONSERVATION ASSOCIATION

⁷ We have been told by local planning officials that NCD “preserved” (*i.e.*, deed restricted) 5032 acres between 1995-2005. That translates to 629 development rights (= 5032 ÷ 8). If in 2005 development rights were selling at \$15,000 per year, and 2005 was an average or better year for such transactions, the dollar volume of NCD sales in that year would have approached or exceeded \$1 million.

⁸ In local parlance, NCD payments are referred to approvingly as “mortgage-lifters”. They are particularly esteemed by those who take them because, unlike MALPF, which seeks to preserve whole farms, in NCD transactions only bits and pieces of farms are required to be deed restricted. See §18:1-98.G.(1) (“the area of the *noncontiguous parcel* used must be at least 40 *acres* in size or constitute at least 1/2 of the total area of the *lot of record*, **whichever is less**”) (italics in original, emphasis supplied). The County planning staff reports 5462 parcels comprise the 209,454 acres in the AG and CS Districts (average parcel = 38.3 acres).

cc: Richard E. Hall, Secretary, Maryland Department of Planning
County Commissioners, Queen Anne's County
John Borders, County Administrator
Helen M. Spinelli, Chief, Land Use, Growth Management & Environment

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