

IN THE MATTER OF:	*	BEFORE THE
THE OPENING OF A PORTION OF	*	BOARD OF APPEALS
JOHNNYCAKE ROAD	*	FOR
1st Election District	*	BALTIMORE COUNTY
1st Councilmanic District	*	
	•	Case No. CBA-12-030

* * * * *

OPINION

This case came before the Board of Appeals “Board” as an appeal of the December 16, 2011 decision of the County Administrative Officer. The case was heard and the decision written by Donald Brand the designee of the County Administrative Officer.

In this matter Baltimore County proposed to open a portion of Johnnycake Road located in the Windsor Mill section of Baltimore County. The authority for the County’s action is found in Section 18-3-301 et seq of the Baltimore County Code (BCC) (2003 Edition).

The portion of the roadway that the County seeks to open abuts improved properties located at 7705 and 7707 Johnnycake Road, which are owned by James Earl Webb, Jr. and C. Gale Webb who are the Appellants in this case. The portion of Johnnycake Road sought to be opened by the County rests within a Seventy (70) foot wide right-of-way depicted on the plat known as Parkville Trail (Section1/Plat 1) which was recorded on May 27, 1988 in the Land Records for Baltimore County under Plat reference 58-96.

HISTORY

On or about October 11, 2011 the Baltimore county Department of Public Works by its Bureau of Engineering and Construction determined that a Road Opening of the subject property

would be in the best interest of Baltimore County. Accordingly the various bureaus within the County government with attendant responsibilities were notified and their comments sought. Thereafter public notice was issued to all owners of real property that abutted the proposed road widening/opening area. On November 17, 2011 a hearing was convened before Mr. Donald Brand the designated hearing officer for this case. At the hearing appeared Ms. Lois Bergman, Rahee Famili, Mr. James Webb and Ms. Cindy Webb.

Ms. Lois Bergman testified that she was an employee of the Baltimore County Bureau of Real Estate Compliance and certified that notice of the hearing had been served upon: The Parkview Trail homeowners Association; James E. and Cindy Webb; Comcast Cablevision; Baltimore Gas and Electric; Verizon; and Mr. Zahir Khan.

Mr. Rahee Famili testified that he was the Chief of the Highway Design Section of Bureau of Engineering Construction of the Baltimore County Department of Public Works. He testified that the County had developed a plan to extend Security Boulevard from the Health Care Financing Administration building at the end of Security Boulevard, westerly to intersect Fairview Road and then extend westerly to tie into Johnnycake Road. The proposal would require that Lot 3 of the Parkville Trail (The Appellant's property) be subject to a road widening by the County. Mr. Famili went on to testify that Johnnycake is a major collector that goes west to east and absorbs considerable traffic into Baltimore County from Howard County with the traffic destinations being primarily the Social Security Administration building, Rolling Road and the I-695 beltway. The purpose of the proposed plan, according to Mr. Famili is to realign the traffic patters in the subject area to lessen traffic on residential roads by redirecting the traffic on to the Security Boulevard extension.

Mr. James Webb testified that he is the owner of two lots situate on Johnnycake Road with the addresses being 7705 and 7707 Johnnycake Road. According to Mr. Webb the houses on the respective lots were physically moved there from as the result of an earlier agreement between Mr. Webb and his family members in title and a local real estate developer. Mr. Morris Wolfe the real estate developer, again according to Mr. Webb, approached his family circa 1985 – 1986 to solicit the purchase of a portion of their property to enable Mr. Wolfe to construct the Parkview Trails subdivision on the property immediately adjacent to Mr. Webb's property. The agreement was completed and ratified by Baltimore County. Thereafter a plat incorporating the property transfer was recorded with Baltimore County.

Mr. Webb advised the hearing officer that the aforementioned plat did not contain his signature or that that of anyone in title to the two Johnnycake Road properties and was therefore invalid as a transfer of any interest in his property.

After the hearing the County Administrator through his designee determined that the road opening sought by Baltimore County was appropriate and within its authority and ruled in favor of Baltimore County.

THE BOARD'S HEARING

This case came before the Board by way of an appeal pursuant to Section 18-3-302(d) of the Baltimore County Code which reads, in pertinent part, as follows:

(2) An aggrieved person affected by the decision of the County Administrative Officer or the County Administrative Officer's designee may appeal the decision to the County Board of Appeals.

(3) The final decision of the County Administrative Officer or designee shall be presumed to be correct and the aggrieved person shall have the burden of persuasion to show that the decision was arbitrary, procured by fraud, or otherwise illegal.

The Board was asked by the petitioner to overturn the decision of the County Administrator's designee on a number reasons including;

1. That the proposed road widening is not beneficial to the appellants nor to the adjacent residents;
2. That the County's legal authority for a right-of-way along appellant's property does not exist.
3. That there was no showing that the widening of Johnnycake Road would be beneficial to the public in general in Baltimore County.

EVIDENCE AND TRESTIMONY

The Board convened its hearing at which time the file and records of the case below were accepted into evidence. Additional testimony was accepted to refine the issues as presented to the designee for the County Administrative Officer.

Mr. James Earl Webb testified at the Board's hearing and alleged that there was no showing before the hearing below that the proposed road widening would be beneficial to the Appellants, the adjacent residents along Johnnycake Road, nor to Baltimore County in general. Mr. Webb cited among other things that the proposed road widening would eliminate his access to Johnnycake Road. The evidence seems to support this conclusion. However it was conceded by Mr. Webb that his property would not be rendered land locked given his access via a private easement existing along his property.

The Board noted the rationale of Baltimore County as to the generalized benefits to the County if the road widening was to be granted which includes reduction in traffic flow in the affected areas.

Mr. Webb contended that the right of way south to be accepted by the County by way of a designation is legally invalid. The argument for this consists of Mr. Webb's assertion that he and his adjacent neighbors sold portions of their property to the developer mentioned above who, in

turn, incorporated the purchased property into the Parkville Trails subdivision. Thereafter a plat evidencing the change in ownership and establishing the right-of way in favor of the County was filed in the County in 1989 after receiving the requisite approvals. Thereafter an amended plat reflecting the same property transaction was approved filled with the county. The amended plat did not contain the signature of the developer or the Appellant and was therefore, according to the Appellant, an illegal conveyance on the part of the County inasmuch as the unsigned Amended Plat did not comply with the Statute of Frauds.

DECISION

The Board after consideration of all of the evidence presented at the hearing along with the memoranda submitted by the respective parties concludes that the Decision of the designee of the County Administrator was not arbitrary, procured by fraud or otherwise illegal.

In this case the Appellant's have offered no statutory authority for their proposition that there is a requirement that a road widening project in Baltimore County must be proved to be beneficial to an adjacent property owner. We find the Appellant's contention that the right-of-way granted to Baltimore County was extinguished by the creation and recording of an amended plat unpersuasive in that Appellants have agreed that the right-of-way was granted to the County with the inherent right on the part of the County to make corrections to the plat which do not entail an acquisition of land not originally granted to the County.

ORDER

THEREFORE, IT IS THIS 9th day of August, 2012 by the County Board of Appeals for Baltimore County


ORDERED that the Order of the designee of the County Administrator dated December 16, 2011 be and is hereby AFFIRMED.

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*.

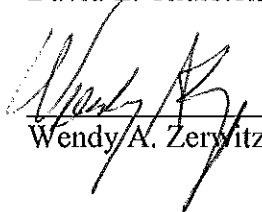
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Wendell H. Grier, Chairman



David L. Thurston



Wendy A. Zerwitz