

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
E side of Whitecliff Lane, 260 feet S of the DEPUTY ZONING
c/l of East Joppa Road * COMMISSIONER
1st Election District * FOR BALTIMORE COUNTY
6th Councilmanic District (8909 Whitecliff Lane)
Joseph and Noelle Bordenski * **Case No. 2009-0146-SPH**
Petitioners

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Hearing filed by Joseph and Noelle Bordenski, the legal property owners. Special Hearing relief is requested in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve three proposed panhandle lots with in-fee access to a private right-of-way in lieu of a public right-of-way at least 30 feet wide. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the requested special hearing relief on behalf of Petitioners was Charles Merritt with Merritt Development Consultants, Inc., the firm that prepared the site plan. Also appearing as counsel for Petitioners was Howard L. Alderman, Jr., Esquire. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is a rectangular-shaped property and contains 0.6625 acre, more or less, zoned D.R.5.5. The property is located on the east side of Whitecliff Lane, south of East Joppa Road, in the Carney area of Baltimore County. Whitecliff Lane is a private road leading from East Joppa Road that is approximately 40 feet

wide with 20 feet of paving leading to the Oakcrest Village Retirement Community that is owned by Oak Campus Partners, LLC.

As shown on the site plan, there are two properties situated side-by-side on the east side of Whitecliff Lane. The uppermost property is owned by Charles Merritt and his wife, Julie Merritt. Approximately one year ago, Mr. and Mrs. Merritt came before this Commission for a Special Hearing in Case No. 2008-0070-SPH. That property is also a rectangular-shaped property consisting of approximately 0.602 acre and zoned D.R.5.5. There was an existing home on the property fronting Whitecliff Lane. Petitioners desired to subdivide the property to create three buildable lots. A lot would be created with the existing home near Whitecliff Lane (Lot 1) with in-fee frontage access to the 30 foot right-of-way, and two additional lots (Lots 2 and 3) would be created east of Lot 1. The proposed lots would exceed the 6,000 square foot minimum lot area requirement. As with the instant matter, the issue in that case was proposed access, which for Lots 2 and 3 would be via an easement extending from Whitecliff Lane along the south side of the property. In an Order dated February 28, 2009, Zoning Commissioner William J. Wiseman, III granted Petitioners' request to approve access for the lots on a pre-existing, paved, non-publicly dedicated right-of-way as shown on the site plan that accompanied the petition. A copy of the Order was marked and accepted into evidence as Petitioners' Exhibit 2.

Similarly, in the instant matter, Petitioners desire to subdivide their property to create three buildable lots. There is currently an existing dwelling on the subject property that would be razed. The property would then be subdivided into three fairly equal sized lots, each exceeding the 6,000 square foot minimum lot area requirement, as well as lot width and setback requirements. As shown on the site plan, Lot 1 would have access via the right-of-way on Whitecliff Lane. Lots 2 and 3 would have access via the same maintenance and utility easement

that was created and approved in Case No. 2008-0070-SPH.¹ As such, Petitioners are requesting approval of the three proposed lots as panhandle lots, with in-fee access via the private right-of-way in lieu of a public right-of-way at least 30 feet wide.

In support of the special hearing request, Petitioners' attorney, Mr. Alderman, introduced a number of documents concerning use of and access to Whitecliff Lane and the previously mentioned maintenance and utility easement for proposed Lots 2 and 3 of the Merritt property. First, Mr. Alderman submitted a Deed dated May 28, 1959 that was marked and accepted into evidence as Petitioners' Exhibit 4. This Deed allowed access by others "for the purposes of ingress and egress" of Whitecliff Lane (formerly Brandt Avenue). Next were a Deed and Agreement dated August 23, 1988 and a Deed and Agreement dated January 31, 1991, which were marked and accepted into evidence as Petitioners' Exhibits 5 and 6, respectively. These documents memorialized Baltimore County's right to construct and maintain sewers, drains, water pipes, and other municipal utilities and services along Whitecliff Lane, for access to public utilities by the properties located on Whitecliff Lane. The next two documents were a "Declaration for Private Ingress, Egress, Maintenance and Utility Easement and Easement Agreement" dated July 22, 2008 and a "Declaration for Maintenance of Whitecliff Lane" dated July 28, 2008, which were marked and accepted into evidence as Petitioners' Exhibits 7 and 8, respectively. Petitioners' Exhibit 7 memorialized a declaration and agreement on the part of the Merritt's to permit Petitioners in the instant matter, the Bordenski's, the right to use the easement

¹ Petitioners have also complied with Section 32-4-409(b)(2)(ii) of the Baltimore County Code which specifies that a panhandle driveway must be 12 feet in width per lot where two lots are involved, for a total of 24 feet wide for Lots 2 and 3. As shown on the site plan, the panhandle driveways have been provided for on the south side of the subject property extending to Whitecliff Lane, although actual proposed access to Lots 2 and 3 would be via the same maintenance and utility easement established in the prior case.

area between the parties' two properties for the purpose of vehicular and pedestrian ingress and egress, and for the installation and maintenance of utilities in the easement area. Petitioners' Exhibit 8 memorialized an agreement between the Merritt's (owners of Lots 2 and 3 of their minor subdivision) and Matthew and Tina Crow (owners of Lot 1 of that minor subdivision) for the maintenance and repair of Whitecliff Lane by either of these parties in the event they or their assigns, including contractors and subcontractors, cause damage to Whitecliff Lane during construction of homes on any of the three lots. Finally, Mr. Alderman submitted a Deed dated April 9, 2007 granting ownership of the subject property to Petitioners in the instant matter. This Deed was marked and accepted into evidence as Petitioners' Exhibit 9.

Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. A comment was received from the Bureau of Development Plans Review ("DPR") dated December 10, 2008 which indicates that the developer shall have a title attorney certify that he has the right to burden existing right-of-way with utilities and access for three lots. In response, Mr. Alderman submitted an opinion letter dated June 12, 2007 from attorney James D. O'Connor, Esquire to the County's Bureau of Land Acquisition, which was marked and accepted into evidence as Petitioners' Exhibit 3. This letter was sent in response to similar concerns as to the proposed Merritt minor subdivision and whether they had a right to the existing right-of-way for utilities and access for their proposed three lots. Mr. O'Connor opined that based on his investigation into the Deeds and uses pertaining to Whitecliff Lane that the Merritt property did have utilities and ingress/egress access to the existing right-of-way. Mr. Alderman indicated that the letter serves to respond to and address the DPR comment in the instant case as well.

The private roadway known as Whitecliff Lane (formerly Brandt Avenue) was, based on the evidence presented, established well before the development proposal for the subject property was submitted. Mr. Alderman proffered that in evaluating the proposed development and the relief requested, the potential impact on the community served by Whitecliff Lane would be minimal. None of the residents having a right to use Whitecliff Lane appeared at the hearing or expressed in any manner opposition to the relief requested. The proposed development would meet all the minor subdivision regulations and would meet all of the criteria set forth in Section 502.1 of the B.C.Z.R., including that it would not overcrowd the land, cause an undue concentration of people, or overburden the roadway, nor would it be detrimental to the health, safety, or general welfare of the locale.

Considering of all the testimony and evidence presented, I am persuaded to grant the special hearing relief. I find that the proposed access is appropriate in this instance, given that the private roadway has existed in its present scale and condition since 1988 and is proposed to serve only two additional lots, as a result of the proposed minor subdivision, beyond what exists presently in this case. I also believe it is prudent that Petitioners and any subsequent owners of the proposed three new dwellings will utilize the existing private ingress, egress, maintenance and utility easement that was created in the prior case involving the Merritt's. This will likely reduce the impervious surfaces that would result if the panhandle strips were actually used for ingress and egress to and from those newly created lots. Overall, I believe Petitioners' plans are appropriate and would cause the least impact to this small residential community that utilizes Whitecliff Lane in combination with the Oakcrest Village continuing care community.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered, I find that Petitioners' request for special hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 26th day of February, 2009 that Petitioners' request for Special Hearing relief filed in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve three proposed panhandle lots with in-fee access to a private right-of-way in lieu of a public right-of-way at least 30 feet wide be and is hereby GRANTED, subject to the following:

1. Petitioners may apply for permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

____SIGNED_____
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz