

RE: **PETITIONS FOR SPECIAL HEARING *
AND VARIANCE**

E/S of the End of Falls Run Road, 3,500' SW*
C/line of Liberty Road (MD Rte. 26)

(2994, 2995 & 2998 Falls Run Road)

2nd Election District
4th Council District

Florence W. Bell, Petitioner

*

BEFORE THE

ZONING COMMISSIONER

FOR

BALTIMORE COUNTY

Case No. 2009-0254-SPHA

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the owner of the subject property, Florence Wilhelm Deitz Bell, through her attorney, C. William Clark, Esquire. The Petitioner requests a special hearing to approve a waiver, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), and Section 32-4-409 (c) of the Baltimore County Code (B.C.C.), Development Regulations, to permit access to a local street (Liberty Road) through an existing right-of-way instead of an in-fee panhandle strip for a proposed three (3) lot minor subdivision. In addition, Petitioner requests a variance from B.C.C. Section 32-4-409(e)(2) to allow access to the subject property by way of a 3,500 ± feet panhandle length (Falls Run Road) in lieu of the maximum permitted 1,000 feet in an R.C. zone. The subject property and requested relief are more particularly described on the three-page site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1A-1C.

Appearing at the requisite public hearing in support of the requests were Petitioner's son, Arthur Bell, Mark Tsitlik, P.E., with KCW Engineering Technologies, Inc., the land planners and consultants who prepared the site plan and participated in his capacity as an expert in the

interpretation of the Baltimore County Zoning Regulations and Development Regulations, and C. William Clark, Esquire, counsel for Petitioner. Appearing as an interested person was Edward A. Terry, Jr., a nearby neighbor, whose four-lot subdivision utilizes Falls Run Road for ingress and egress.

Testimony and evidence offered disclosed that the Petitioner owns 17.149 acres of land located at the end of Falls Run Road, an existing private road (just west of Herrera Court) leading to Liberty Road in the Holbrook community that is within the Greater Randallstown area of the County. The subject property is zoned R.C.5 in its entirety, undeveloped and mostly wooded, with environmental constraints covering the southern half of the site. In this regard, the Falls Run stream traverses the property from west to east requiring extensive forest buffer, forest conservation and greenway easements that consume 11.675 acres and drives all development to the north and northeastern portions of the site. These constraints limit development to three (3) lots. The irregularly shaped property is currently undergoing a minor subdivision review process to create three (3) residentially permitted lots to be improved with single-family dwellings. Proposed Lot 1 (identified as 2998 Falls Run Road) will contain 2.0012 acres, Lot 2 (to be known as 2994 Falls Run Road) contains 2.0014 acres, and Lot 3 (identified as 2995 Falls Run Road) will contain 13.006 acres and has the topographical and environmental constraints. In view of the proposed subdivision, relief is necessary to legitimize or provide road connection to Liberty Road by way of the existing long private ingress, egress right-of-way described by deed, dated March 3, 1982 (Petitioner's Exhibit 2) as a use-in-common 30-foot and 50-foot right-of-way known as Falls Run Road approximately 3,500 feet in length. A proposed cul-de-sac will be constructed at the end of this right-of-way interiorly on the property for emergency vehicle access and turnaround. Private driveways, as illustrated on Petitioner's Exhibit 1A, will run

from the cul-de-sac to each of the proposed lots. The issue in this case is the variance request to allow the panhandle strip to exceed the maximum length. The current length of the right-of-way is 3,500 feet over half a mile extending from Liberty Road to the subject property owned by the Petitioner. As attorney William Clark aptly points out, it is a pre-existing use. A variance for its use is, therefore, not necessary. It exists, albeit non-conforming to current codes regarding the length of the panhandle driveway. Several of the existing subdivisions that utilize Falls Run Road (*See* Petitioner's Exhibits 4 and 5 – Subdivision Plats of Edward A. Terry property – [PDM No. II-609 and the Bell property – Minor Subdivision No. 08065M]) were planned prior to the existing panhandle code. However, I find that although the existing driveway is longer than the Code requires, it does achieve the Code's main objectives stated in 32-4-409(a)(1)(i)-(iv). The dwelling is to be built on Petitioner's property, should a subdivision be approved, would not lengthen Falls Run Road, as the property is at the very end of this existing driveway. There is no other possible service to a public road, it is within a protected area (R.C. zone) not to mention surrounding adjacent residential developments. I, therefore, find it meets both the uniqueness and practical difficulty required by Section 307 and *Cromwell v. Ward*, 102 Md. App. 691 (1995). There is no dispute that the subject right-of-way driveway has been established and is currently in use. Section 32-4-409(c) therefore allows access via an existing right-of-way instead of in-fee strip where same has been established before the development plan is submitted. The evidence before me clearly establishes that this access was created by deed in 1982. Moreover, Edward Terry, speaking on behalf of his family members and other residents who use Falls Run Road, opined that the Petitioner can legally burden the right-of-way with more traffic for the three (3) new homes proposed and that this use would not overburden the right-of-way. Consequently, he had no objections to the subdivision or Petitioner's use. Mail and trash pads

are provided at Liberty Road (*See Exhibit 1C*). It is clear that the proposed subdivision will not overburden the panhandle and there will be no detrimental impacts to the health, safety or general welfare of the surrounding locale. In my judgment, the panhandle strip is the only practical and possible way to access the parcel and with the improvements proposed, is appropriate. There were no adverse Zoning Advisory Committee (ZAC) comments submitted by any County reviewing agency and Baltimore County is reviewing the proposed subdivision under the Minor Subdivision process.

The issues raised in the petitions are pursuant to the authority granted in Section 500.7 of the B.C.Z.R. Thus, my decision in this matter is based on the zoning of the subject property, the proposed uses on the parcels and other zoning defined issues. I do not have the authority, nor will this decision attempt, to determine issues of processing limited exemptions from the Department regulations which have been delegated by the County Council to the Development Review Committee (DRC). *See Long Meadow Association, Inc., et al*, 168 Md. App. 765 (2006) and County Council Bill 54-05. A review of the facts, evidence and testimony presented in this case reveals that the Petitioner and her counsel are in agreement with this conclusion.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions held, and for the reasons set forth above, the relief requested shall be GRANTED.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 9th day of June 2009, that the Petitioner's request for Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) and Section 32-4-409(c) of the Baltimore County Code (B.C.C.), Development Regulations, to allow access to a local street (Liberty Road) through an existing right-of-way instead of an in-fee panhandle strip for a proposed three (3) lot minor subdivision, in accordance with Petitioner's Exhibit 1A-1C, be and

is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance from Section 32-4-409(e)(2) of the Baltimore County Code (B.C.C.) to allow a panhandle length of 3,500 ± feet in lieu of the permitted 1,000 feet in an R.C. zone, for the proposed Minor Subdivision, in accordance with Petitioner's Exhibit 3, be and is hereby GRANTED, subject to the following restrictions:

1. ADVISORY: This Order approves the requested Special Hearing and Variance but does not address the proposed subdivision. The Petitioner's subdivision proposal to create the proposed Lots 1, 2 and 3 must continue its review by the Development Review Committee (DRC) for consideration and processing.
2. Development and use of the subject property shall comply with all environmental regulations that may be subsequently required by the Department of Environmental Protection and Resource Management (DEPRM).
3. When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

Any appeal of this Order shall be taken within thirty (30) days in accordance with Baltimore County Code (B.C.C.) Section 32-3-401.

ORIGINAL SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County