

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
E/Side of Middle River Road, 270' N of		
C/line of Pawnee Road	*	ZONING COMMISSIONER
(517-B Middle River Road)		
	*	OF
15 th Election District		
6 th Council District	*	BALTIMORE COUNTY
Michael Osborne, Sr., et ux	*	Case No. 2010-0126-A
Petitioners		

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the legal property owners, Michael Osborne, Sr. and his wife, Patricia Osborne. Special hearing relief is requested pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve a waiver to the development regulations contained in Sections 32-4-107 and 32-4-409 of the Baltimore County Code (B.C.C.) to permit a 10-foot wide paved and cleared panhandle driveway in lieu of the required 16 feet.¹ The subject property and requested relief are more fully described on the site plan submitted which was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the requested special hearing was Michael Osborne, Sr., property owner, and Thomas A. Church, the professional engineer and zoning consultant who prepared the site plan for this property. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the subject property is irregularly shaped

¹ As the Zoning Advisory Committee (ZAC) comment received from the Bureau of Development Plans Review reveals, they determined under their General Standards contained in their Plans Review Policy Manual and from Section 32-4-107 of the B.C.C. that 16 feet is the required width for the driveway.

and contains approximately 1.53 acres of land zoned primarily D.R.5.5 with a thin strip of D.R.16 at the northern boundary. The property is located on the east side of Middle River Road between Compass Road and Pawnee Road in the Essex/Middle River area of the County. As the site plan demonstrates, the property is divided into two (2) lots: Lot 1 - 517-B, which contains approximately .87 acres of land improved with a single-family dwelling where Michael and Patricia Osborne have lived for the past 28 years, and Lot 2 - 517-C, which contains approximately .66 acres of land and currently unimproved. Lot 1 - 517-B is closer to Middle River Road (about 400 feet) and the existing dwelling is accessed via a 10-foot-wide driveway that exclusively serves the subject property. Lot 2 - 517-C lies immediately east of the existing dwelling, and testimony revealed that the Petitioners wish to improve this lot with a single-family dwelling in which their son, Michael, Jr. and his wife, Heather, will reside. Petitioners are not requesting any variance relief for construction of the dwelling and are solely seeking approval for a 10-foot wide panhandle driveway in lieu of the required 16 feet. This driveway would exclusively serve the property designated on the site plan and the subject of this request as neighboring properties have their own access ways off of Middle River Road.

In an effort to assist the undersigned, Mr. Church marked the Petitioners' site plan at the outset of the public hearing in yellow (outlining the existing and proposed dwellings), and in green (highlighting the existing and proposed driveway that is the subject of this hearing). Testimony revealed that there is an existing 10-foot wide access driveway that leads from Middle River Road to a turnaround area in front of the Petitioners existing dwelling on Lot 1 - 517-B. Mr. Church explained, in its review of the minor subdivision proposal, that the Office of Planning approved two (2) five-foot wide strips in lieu of the required 10 feet of paving for the existing parking area in front of the existing dwelling. However, when the Petitioners submitted

their request to extend the existing driveway to serve the proposed dwelling on Lot 2 - 517-C, Lieutenant Bosley of the Fire Department expressed concern. The Petitioners have since reached an agreement with Lieutenant Bosley as the Fire Department does not oppose the request to keep a ten-foot wide driveway as long as the Petitioners agree to construct a turnaround for fire and emergency vehicle access to the proposed dwelling on Lot 2 - 517-C. The requested turnaround, which alleviates the concerns of the fire department, is reflected on the site plan submitted in this case as Exhibit 1.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning, dated November 12, 2009, which indicate that the Office does not oppose the requested relief. The Office of Planning granted a waiver of in-fee strips, each having a width of 5 feet for this property, on December 17, 2007.² Tom Church then wrote a letter to the Office of Planning requesting that they grant a waiver of paving width. The Office of Planning does not have the authority to grant a waiver of paving width unless the Director finds that the waiver is in compliance with other County ordinances and regulations. Development Plans Review had indicated that the paving width was not adequate.

The Bureau of Development Plans Review in its ZAC comment, dated October 29, 2009, indicated that B.C.C. Section 32-4-409(i)(1), states that “the panhandle driveway shall be built in accordance with standards established by the Director of Public Works.” The established standard detail (R-P) calls for the driveway to be 16 feet wide. However, as the minor subdivision plan shows, the developer only owns a 10-foot wide strip of land for driveway use. In cases like this, Public Works asks the developer to contact the adjacent property owners to see

² The approval letter from the Office of Planning is also contained in the case file.

if they are willing to convey land or an easement sufficient to provide the required 16-foot width. If they are not willing, and the developer has made a fair market offer, the Director of Public Works (DPW) will consider a request to reduce the width requirement. In this case, as far as DPW know, no contact with adjacent property owners had been made. Accordingly, they assumed developer simply wished for DPW to grant the waiver. The requirement for a developer to acquire offsite right-of-way prior to approval of a plan is commonplace in the development process. They recommended that this case be treated the same, i.e., that the developer be required to contact all adjacent property owners with fair market value offers to buy land or easement. If offers are accepted, the developer builds the required 16-foot-wide pavement. If none of the offers are accepted, the Director of Public Works will consider reducing the required section to the existing 10 feet. If offers are accepted, such that pull-over areas could be built, the Director would consent to that. But, at minimum, an effort to acquire the right-of-way should be required.

Based on the testimony and evidence presented at the hearing, I am persuaded to grant the requested relief. Testimony presented at the public hearing revealed that, consistent with the Bureau of Development Plans Review comment, the Petitioners made legitimate efforts to purchase a 6-foot strip of property from neighboring residents in order to meet the requirement for a 16-foot panhandle driveway. Mr. Church provided documentation from Brian T. Counts, 517 Middle River Road, and George and Patricia Counts, 517-A Middle River Road, indicating that they declined the Petitioners' offer to purchase the strip of property that would be necessary to pave the required 16-foot strip of panhandle driveway. The documentation is contained in the case file and made a part of the record in this case. Thus, I find that the Petitioners have made legitimate efforts to meet the Bureau of Development Review's request, and have provided a

practical solution to the Fire Department's concerns for emergency vehicle movement by proposing a turnaround in front of the proposed dwelling on Lot 2 – 517-C.

After considering all of the evidence, I am persuaded that the requested special hearing can be granted without having any negative effect on the surrounding locale. The driveway access will only serve the subject property as all of the neighboring properties possess their own means of access to Middle River Road. The turnaround reflected on the site plan alleviates the Fire Department's concerns with regard to accessibility and circulation, and I find that this request can therefore be granted in accordance with the spirit and intent of the B.C.Z.R. I find sufficient justification as described above for the request and pursuant to B.C.C. Section 32-4-107(a), the waiver is hereby allowed.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County, this 6th day of January 2010, that Petition for Special Hearing seeking approval pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) and Section 32-4-107 of the Baltimore County Code (B.C.C.), for the development of the site allowing a 10-foot wide paved and cleared panhandle driveway in lieu of the required 16 feet, in accordance with Petitioners' Exhibit 1, 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 his 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.
2. Petitioners shall construct the turnaround as indicated on the site plan submitted as Petitioners' Exhibit 1.

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

WJW:dlw

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