

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(1752 Parsonage Road)		
6 th Election District	*	OFFICE OF ADMINISTRATIVE
3 rd Councilmanic District		
Glenn Yoder	*	HEARINGS FOR
Petitioner		
	*	BALTIMORE COUNTY
	*	CASE NO. 2013-0183-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Special Hearing filed by Keith R. Truffer, Esquire on behalf of Glenn Yoder, legal owner. The Petitioner is requesting Special Hearing relief pursuant to § 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), as follows: (1) to permit a single panhandle driveway to serve six dwellings in lieu of the maximum of five dwellings; and (2) to permit the creation of three lots with access to the local street through right-of-ways instead of in-fee strips. The subject property and requested relief is more fully depicted on the site plan marked and accepted into evidence as Petitioner’s Exhibit 6.

Appearing at the public hearing held for this case was Glenn Yoder and Alonzo Childress. Keith R. Truffer, Esquire, appeared and represented the Petitioner. A neighbor whose property adjoins this site (James Moro) attended the hearing and expressed support for the petition.

Zoning Advisory Committee (ZAC) comments were received from Department of Planning (DOP), Department of Environmental Protection and Sustainability (DEPS) and the Bureau of Development Plans Review (DPR). The (DOP) supports the petition, while (DEPS) noted the Petitioner must comply with Baltimore County environmental regulations. The Bureau of DPR (and the office of People’s Counsel) noted that a waiver is not available to increase

beyond five the number of houses accessed via panhandle driveway. This issue will be discussed in greater detail below.

Testimony and evidence revealed that the subject property is approximately 30.8 +/- acres and is zoned RC 8. This is an unusual case in many respects. The 30 +/- acre parcel at issue is zoned RC 8 (Environmental Enhancement), which is a rarely seen zoning classification. The legislative intent in creating the zone was to preserve and protect environmental resources, an abundance of which (including a stream, wetlands, forest, etc.) are located on the property. The B.C.Z.R. sets forth certain “performance standards” for the zone, which are intended to “foster creative development” while promoting the environmental enhancement goals of the RC 8 zone. B.C.Z.R. §1A09.7.C. The DOP, in its ZAC comment, believes the Petitioner has satisfied these requirements and supports the panhandle access for proposed lot 3. Trouble is, by satisfying the requirements and goals for the zone, the Petitioner has arguably run afoul of Baltimore County Code (BCC) §32-4-409, which states that a maximum of five dwellings may be accessed via panhandle driveway, and that a waiver cannot be granted to avoid the restriction. On closer examination, I do not believe this restriction is applicable herein, and even if it were, the unique factual issues in the case, as well as the equities, would favor granting Special Hearing relief in this scenario.

This case involves three proposed lots (a minor subdivision) on 30+/- acres. The Petitioner’s property is enveloped by a major subdivision (Hedrick’s Farm) approved in 1988, as shown on the plat marked as Exhibit 7. In that subdivision, the Developer (Joseph O’Neill) received approval for a 39 lot development (with an average lot size of 1.8 acres) with a panhandle driveway accessing five of the lots. The Petitioner’s property was and is not part of the Hedrick’s Farm subdivision. As such, there is no issue presented regarding an amendment of that

development plan. Along the same lines, I concur with the argument raised by Mr. Zimmerman (July 10, 2013 e-mail) that the Petitioner's lot does not enjoy vested rights or "grandfathered" status concerning the five panhandle lot restriction currently found in BCC §32-4-409. Even so, I do not believe that restriction is applicable in the unique setting of this case. Simply put, the Petitioner's development rights should not be abridged based on actions taken by a neighboring landowner, especially in a scenario where, as here, the Petitioner has satisfied the stringent requirements of the RC 8 zone by proposing 3 lots on over 30 acres of land. The Petitioner himself is not proposing 5 panhandle lots, and thus the restriction of BCC §32-4-409(d) is not applicable to this minor subdivision.

The current proposal does not amend or in any way alter the development plan approved in the Hedrick's Farm case. Instead, this is a request by the owner of a discrete 30+/- acre parcel, who is permitted as of right to create 3 lots, to access by private agreement one of those lots (#3) which happens to be situated at the end of a panhandle driveway. Over 25 years have elapsed since the approval of Hedrick's Farm, and there is thus no indication or intimation that the Petitioner has somehow structured this transaction to avoid the panhandle lot restriction. The Petitioner is not related to or affiliated with the O'Neill family, and should be afforded access to his property in a manner that will cause the least amount of impact to the environmental features on site. Stated otherwise, I do not believe it is equitable that a subdivision approved 25 years ago somehow prevent the Petitioner from gaining access to one lot, especially when the RC 8 zoning dictates that environmental considerations are paramount when considering development proposals in the zone.

The other Special Hearing request pertains to the means of access by right-of-ways instead of in-fee strips. The DOP found that such means of access would not be detrimental to adjacent

properties, and I concur. Accordingly, under BCC §32-4-409(c), this request shall be approved.

Pursuant to the advertisement, posting of the property, and public hearing, and after considering the testimony and evidence offered, I find that Petitioner's Special Hearing request should be granted, though on different grounds than sought in the Petition.

THEREFORE, IT IS ORDERED, this 10th day of July, 2013 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), as follows: (1) to permit proposed Lot 3 to be accessed via Hedrick's Court, as shown on Petitioner's Exhibit 6; and (2) to permit the creation of three lots with access to the local street through right-of-ways instead of in-fee strips, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioner is 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, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
- Petitioner must comply with the ZAC comments of DEPS (dated March 13, 2013), a copy of which is attached hereto.

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

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:sln