

IN RE: PETITION FOR SPECIAL HEARING
 1,521' W c/l of Dogwood Road, 2,055'
 NW Wrights Mill Road
(8633 Dogwood Road)
 2nd Election District
 4th Council District

Michael A. Bagby
 Petitioner

* BEFORE THE
 * ZONING COMMISSIONER
 * OF BALTIMORE COUNTY
 * Case No. 06-400-SPH

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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 owner of the subject property, Michael A. Bagby. As filed, the Petitioner requests a special hearing to approve a waiver of public works standards from Section 32-4-409(b) of the B.C.D.R.¹, to allow access to the proposed lots by way of a right-of-way in lieu of the required in fee ownership. The subject property and requested relief are more particularly described on the site plan submitted, which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing and testifying on behalf of the Petitioner was Bruce E. Doak with Gerhold, Cross & Etzel, Ltd., the consultants who prepared the site plan for this property and Michael A. Bagby, owner and site developer. There were no Protestants or other interested citizens from the locale in attendance.

Testimony and evidence offered revealed that the subject property is an irregular shaped parcel located approximately 1,500 feet to the west of the right-of-way for Dogwood Road, north of Wrights Mill Road in the Granite/Woodstock area of the county. The property contains a gross area of 4.05 acres, more or less, zoned R.C.2 and currently undergoing a minor subdivision process (PDM 06-009-M). The Petitioner is desirous of subdividing his property to

¹ At the outset of the hearing, the Petition was corrected by interlineation to correct the relief requested as follows: "to approve access to the local street (Dogwood Road) through the existing right-of-way, which is 16 feet wide and approximately 1,935 feet long, in lieu of the required in-fee strip, pursuant to Section 32-4-409(c) of the Baltimore County Code (B.C.C.), for proposed Lot(s) 1 and 2.

create two building lots for a proposed single-family dwelling. Lot 1 will be triangularly shaped and consists of 1.71 acres; Lot 2 to the south is rectangularly shaped and consists of 2.34 acres of which 1.55 acres will contain the forest conservation easement. At issue in the instant case, is the proposed access. In this regard, it is to be noted that for many years the Petitioner and three families, namely Walter B. and Alma J. Duvall, Margaret C. Jett, and Anthony F. DiPaula, Jr. have utilized an existing use-in-common right-of-way to access their properties. Special Hearing relief is requested to determine whether the proposed lots can utilize the same access, in lieu of the in-fee access required by the B.C.C.

The B.C.C. indicates that all access to public roads occur via in-fee driveways; however, Section 32-4-409(c) thereof allows access via right-of-way, where same has been established before the development plan is submitted. Subsection (b)2(ii) thereof specifies that a panhandle driveway must be 12 feet in width, per lot, where two lots are involved. Thus, the panhandle driveway/right-of-way must be 24 feet wide for the two lots requested here. However, pursuant to Petitioner's Exhibit 1, the right-of-way in this instance is only 16 feet wide.

There is no dispute that the subject use-in-common driveway has been established and is currently in use. Additionally, there were no adverse Zoning Advisory Committee (ZAC) comments submitted by any County reviewing agency. I am therefore of the opinion, after consideration of the testimony and evidence presented, that the requested relief can be granted and find that the proposed access is appropriate in this instance, given the fact that it has existed in its present scale and condition for many, many years, and is proposed to serve only two additional lots. The Office of Planning comment prepared by David Green is instructive. He states that the site is located along a winding rural road and the minimization of driveway access points is beneficial to motorists traveling along Dogwood Road. Thus, I find that the grant of relief will actually be beneficial to the locale. The Bureau of Development Plans Review indicates that they would like to see the 16-foot-wide existing right-of-way paved with a maximum grade of 14%. In my view, such a recommendation is unnecessary given the history of this subject right-of-way. As many in the county will recall, the horrendous fire which occurred at this location known as the

"Jett Stump Dump" fire when the mulch piles ignited. Moreover, every piece of fire equipment known to man traversed this right-of-way without difficulty. Every dump truck ever manufactured hauled materials across this very same right-of-way to the "Jett Stump Dump" without difficulty. The access is deemed adequate in width and grade and contains a solid base. With regard to the "tee turnaround" at the end of the use-in-common portion, the minimum 32-foot centerline radius and the trash and mail pads at Dogwood Road, I note that these have been duly noted and provided for on the minor subdivision plat received into evidence and marked as Petitioner's Exhibit 2. In this regard, the Petitioner shall comply with these requests as recommended.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 25th day of April, 2006 that the Petition for Special Hearing to approve access to the local street (Dogwood Road) through the existing right-of-way, which is 16 feet wide and approximately 1,935 feet long, in lieu of the required in-fee strip, pursuant to Section 32-4-409(c) of the Baltimore County Code, for proposed Lots 1 and 2, in accordance with Petitioner's Exhibits 1 and 2, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, the Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) The relief granted herein is limited to proposed Lots 1 and 2. In the event of any future subdivision of the subject property, the private right-of-way shall be improved and paved within one year of the issuance of the first occupancy permit and prior to the issuance of the occupancy permit of the last lot to be served, whichever comes first. In addition, for any private access road serving more than the two lots in the minor subdivision (PDM 06-009-M) a covenant (use-in-common and maintenance) shall be recorded with the record plat for each lot.
- 3) When applying for a building permit, the site plan filed must reference

this case and set forth and address the restrictions of this Order.

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

WJW:dlw

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County