

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(5323 Glen Arm Road)		
11 th Election District	*	OFFICE OF
3 rd Council District		
Glen Arm Properties I, LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2018-0251-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed on behalf of Glen Arm Properties I, LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”) as follows: (1) to approve access to the local street or collector street through an existing right-of-way instead of an in-fee strip; and (2) to allow the continued use of an existing 1,440 ft. right-of-way access strip for up to three (3) lots. A site plan was marked and admitted as Petitioner’s Exhibit 1.

Frank Pommert and Bernadette Moskunas appeared in support of the petition. Timothy M. Kotroco Esq., represented the Petitioner. Several neighbors attended the hearing to obtain additional information about the request. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Environmental Protection and Sustainability (DEPS), the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP).

Petitioner purchased in 2016 a thirty-two (32) acre parcel of land on Glen Arm Road. The property was improved with a single-family dwelling, although it was in poor condition and

suffered extensive fire damage. The balance of the property was and continues to be in agricultural production.

Mr. Pommatt testified he owns a farm nearby, and that he intends for the immediate future to continue farming the subject property. Ultimately, Mr. Pommatt indicated he and the other two members of the ownership entity plan to subdivide the property and construct three single-family dwellings. Petitioner would rebuild the dwelling previously owned by the Horner family and would construct two additional single-family dwellings. Mr. Pommatt testified the dwellings would be situated near one another on the tract and that each of the three lots created in the minor subdivision process would be approximately ten (10) acres in size. As discussed at the hearing, both the BCZR and Maryland's Sustainable Growth and Agricultural Preservation Act of 2012 would limit to three (3) the number of dwellings on the subject property.

But this case does not concern the proposed minor subdivision. Rather, Petitioner seeks special hearing relief merely to confirm it has the right to continue using the "farm road" to access the subject property. Neighbors indicated the "road" is in extremely poor condition and during heavy storms there is considerable run-off from this driveway, and debris and sediment is washed onto Glen Arm Road and neighboring properties. As discussed at the hearing, Petitioner will be required during the minor subdivision process to improve the condition of the driveway and (along with Baltimore County and the existing owners who use this driveway) remedy the excessive stormwater run-off from this steep and unpaved driveway.

Under Baltimore County Code (BCC) section 32-4-409(b)(1) an owner proposing to access an interior lot(s) by a panhandle driveway is required to provide an "in-fee strip of land for access to the local street." But the law contains an "exception" when "a right-of-way has been established before the submission" of the plan. BCC §32-4-409(c). In that case, the ALJ can approve access

to the local street “through the existing right-of-way instead of an in-fee strip.” *Id.* Ms. Moskunas testified the driveway has been in use in its current location for over 60 years, and deeds were submitted to substantiate this fact. As such, Petitioner is entitled to use this existing right-of-way to access the three (3) proposed building lots.

THEREFORE, IT IS ORDERED this 7th day of **May, 2018** by this Administrative Law Judge, that the Petition for Special Hearing: (1) to approve access to the local street or collector street through an existing right-of-way instead of an in-fee strip; and (2) to allow the continued use of an existing 1,440 ft. right-of-way access strip for up to three (3) residential building lots, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. Petitioner must comply with the ZAC comment submitted by the DEPS, a copy of which is attached hereto.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln