

JENNIFER BURGARD
20125 Brownsville Road
Brownsville, MD 21715

APPEAL NO. AP2006-089

Appellant

OPINION

This action is an appeal from a determination of the Planning Commission decision that the subdivision be denied due to the road being inadequate under Article III and IV of the Adequate Public Facilities Ordinance and a request for a variance from the density requirement of 1 dwelling unit per 20 acres to 1 dwelling unit per 1.64 acres. The subject property is located at 20021 Pear Tree Lane, Knoxville, Maryland 21715, is owned by Amos J. and Rita G. Dye, and is zoned Environmental Conservation.

A public hearing was held before a full Board on July 19, 2006. The Appellant offered evidence and testimony in support of the appeal. Opponents offered evidence and testimony in opposition to the appeal.

FINDINGS OF FACT

The following findings of fact are made by the Board, based upon the testimony given and all data and other evidence presented, and upon a study of the specific property involved, as well as the neighborhood:

1. Appellant seeks to subdivide the subject property and purchase an existing dwelling located thereon.
2. The proposed subdivision will create a parcel of "remaining lands" consisting of 2.48 acres.
3. The remaining lands are adjacent to Peach Tree Lane, deemed to be an inadequate road.
4. Appellant's family owns property adjacent to the proposed parcel.

RATIONALE

Section 405.11.B of the Subdivision Ordinance for Washington County, Maryland, states, in pertinent part, that "Every lot shall abut a minimum of twenty-five (25) feet, and shall have access to a road or street that has been dedicated to public use and accepted for public maintenance...." Certain exceptions are allowed for transfers to immediate family members of the developer under certain conditions. *See* §405.11.B.1. When "extraordinary hardships may result from strict compliance with these regulations, or that existing topographic conditions or irregular shape of the property warrants a variance from these regulations, . . ." the Board ". . . may vary the regulations so that substantial justice may be done and the public interest secured; provided that such variation will not have the effect of nullifying the intent and purpose of these regulations." §107. A variance may be granted by the Board when: (1) strict compliance would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome; and (2) denying the variances would do substantial injustice to the applicant and a lesser relaxation than that applied for would not give substantial relief; and (3) granting the variance would observe the spirit of the Ordinance and secure public safety and welfare. Section 25.56(a).

In the instant appeal, Appellant seeks approval to subdivide a property with an existing residence along an inadequate road. Any traffic generated by this proposal would be minimal, and we are satisfied that the grant of this appeal will not adversely impact the public health, safety, or welfare. The size and shape of the property prevent strict compliance with the Ordinance, and Appellant's proposed use is a reasonable use for the property. No evidence was presented that the proposed use was incompatible with the neighborhood; disruptive of neighbors' quiet enjoyment of their properties; detrimental to surrounding property values; generative of excessive odors, dust, gas, smoke, fumes, vibrations, or glare; generative of traffic that would exceed the capacity of existing infrastructure; or that the proposal was an inappropriate use of land or structure. Strict compliance would be unduly burdensome, would not provide any added safety or aesthetic benefits, and would fail to advance the spirit and purpose of the Ordinance.

Based upon all of the testimony and evidence presented, this Board finds that the subject request does not adversely affect the public health, safety, security, morals, or general welfare, nor does it result in dangerous traffic conditions, or jeopardize the life and property of neighborhood residents. Accordingly, for the reasons set forth herein, this appeal is hereby GRANTED this 18th day of August, 2006.

By: Spence Perry, Chair