

REGINALD LEE & ELSIE K. MARTIN
21170 Millers Church Road
Hagerstown, MD 21740

APPEAL NO. AP2006-109

Appellants

OPINION

This action is a request for a variance from required 4 acre lot area to 1.09 acres for a bakery addition to an existing dwelling, a variance from the required 300 feet lot width to 215 feet and from the required 50 feet rear yard setback to 34.7 feet for same. The subject property is located at 21170 Millers Church Road, Hagerstown, MD 21740, is owned by the Appellants, and is zoned Agricultural.

A public hearing was held before a full Board on September 13, 2006. Neither opposing testimony nor evidence was presented to the Board.

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. Appellants seeks to operate a bakery on the subject property.
2. The subject lot was created in 1998 pursuant to then-existing subdivision and zoning regulations which have since been superceded.
3. Appellants' mother/mother-in-law owns the adjoining property and has no objections to this appeal.
4. Buildings on the adjacent property prevent Appellants from enlarging the subject property so as to obviate the need for these variances.
5. Received and filed with the Board was a memorandum from Kathy A. Kroboth, Washington County Zoning Coordinator, advising that the appeal is consistent with the

Comprehensive Plan.

6. Received and filed with the Board was a memorandum from Terrence P. McGee, Chief Engineer, Washington County Engineering Department, advising that the Department took no exceptions to the subject request, provided that the sight distance obstructions are cleared.

RATIONALE

This Board has authority to grant a variance upon a showing by the Appellant of practical difficulty or undue hardship. Sections 25.2(c) and 25.56, Zoning Ordinance for Washington County, Maryland. "Practical Difficulty" may be found 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).

The Appellants have met their burden of demonstrating a practical difficulty. The proposed bakery is a reasonable and principally-permitted use of the property, and locating it anywhere other than its proposed location is not feasible due to the lot's shape and the location of the residence thereon. 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. Moreover, evidence was presented that strict compliance was unobtainable since the property could not be enlarged.

Based upon all of the testimony and evidence presented, this Board finds that the subject request does not promote the public health, safety, security, morals, or general welfare, nor is it compatible with the surrounding neighborhood. Accordingly, for the reasons set forth herein, this appeal is hereby GRANTED this 12th day of October, 2006.

By: Spence Perry, Chair