

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

AMANDA CLARK
13653 Faith Road
Clear Spring, MD 21722

Appeal No. AP2007-058

Appellant

OPINION

This action is an appeal from a determination of the Planning Commission that a proposed one lot subdivision without public road frontage be denied. The subject property is located at 13653 Faith Road, Clear Spring, MD 21722, is owned by Ray L. E. Clark, and is zoned Agricultural (Rural).

A public hearing was held before a full Board on July 25, 2007. The Appellant offered evidence and testimony in support of the appeal. 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. The Appellant proposes to build a house on a 1.43 acre lot which was part of her grandparents' farm.
2. The farm is 120 acres area and is to be placed under an agricultural preservation easement.
3. The lot is rocky and unsuitable for productive agricultural use.
4. There is no poor farmland available to use as road frontage, so any dedication of land as road frontage would decrease the remaining amount of productive (and to be preserved) farmland.
5. Access to the lot will be via a deeded right of way.
6. The preservation easement is not yet conveyed.
7. 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.

8. No one testified in opposition to this appeal.

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.

In the instant appeal, Appellant seeks approval to subdivide off a parcel from her grandparent’s farm. The proposed lot is of adequate size for residential use, and such use would be compatible with the neighborhood. 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. 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.

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 WITH CONDITIONS AS SET FORTH BELOW this 24th day of August, 2007.

Conditions

1. For a period of 10 years following the issuance of a Certificate of Occupancy for any residence constructed on created lot, the residence shall only be occupied by Appellant and her immediate family members.
2. Prior to the issuance of a building permit, proof of recordation of a written right-of-

way, evidencing a 25'-wide right of way to the created lot, will be submitted to the Department of Permits and Inspections.

BOARD OF APPEALS
By: Bert Iseminger, Chair