

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

KAREN MARIE WALLA
17842 Carter Lane
Hagerstown, MD 21742

Appeal No. AP2007-066

Appellant

OPINION

This action is a request for a density variance from one dwelling unit per 30 acres to one dwelling unit per 1.7 acres for a proposed six-lot subdivision. The subject property is located at the southwest corner of King Road and MD Route 67, is owned by The Estate of Agnes House, and is zoned Preservation.

A public hearing was held before a full Board on August 22, 2007. 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 proposes to create six lots from the subject property.
2. Appellant has one parcel of 4.3 acres and a second parcel of 10.11 acres, each of which may be subdivided to create 3 lots per parcel.
3. Thus, Appellant is allowed to create six lots as of right pursuant to exemptions set forth in the Ordinance in § 5.4C.
4. Appellant would like to create the new lots from the 10.11 acre lot.
5. The Appellant would protect existing trees.
6. The 4.3 acre lot has an existing house.
7. Opponents concerns regarding septic and wells reliability and an over-concentration of houses on the 10.11 acre parcel.

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 subject request arises due to the sizes of two adjacent parcels. Appellant is allowed to create the number of lots which she seeks herein without a variance. Granting this variance does not increase the number of homes that may be constructed on the property when taken as a whole. Rather, granting this relief allows for smaller lots to be created from the 10.11 acre parcel. The proposed use is a permitted use of the property, compatible with the surrounding neighborhood. Granting this density variance will not result in greater traffic or increased houses. There was no credible, non-speculative evidence presented that showed that strict compliance would achieve any benefits. Moreover, the evidence showed that the proposed use was compatible with the neighborhood; not disruptive of neighbors' quiet enjoyment of their properties; not detrimental to surrounding property values; not generative of excessive odors, dust, gas, smoke, fumes, vibrations, or glare; not generative of traffic that would exceed the capacity of existing infrastructure; and that the proposal was an appropriate use of land.

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. For all of the foregoing reasons, the grant of the relief requested advances the spirit of the Ordinance. Accordingly, for the reasons set forth herein, this appeal is hereby GRANTED WITH THE CONDITION AS SET FORTH BELOW this 20th day of September, 2007.

Condition

1. No future subdivision of the 4.3 acre parcel is allowed.

BOARD OF APPEALS

By: Bert Iseminger, Chair