

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

EDWIN E. DAVID  
7007 Mariah Furnace Road  
Boonsboro, MD

Appeal No. AP2007-071

Appellant

OPINION

This action is an appeal from a determination of the Planning Commission that a four-lot subdivision be denied due to inadequate road width. The subject property is located at 7007 Mariah Furnace Road, Boonsboro, MD, is owned by the Appellant, and is zoned Environmental Conservation.

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 creation of a four-lot subdivision from the 140-acre property.
2. The proposed lots are located along Gilardi Road, a narrow gravel road.
3. To make the road adequate, the Appellant would have to widen 400' of the road and pave it. The approximate cost would be around \$35,000.
4. Testifying in opposition to the appeal, citizens testified that they didn't want the road upgraded. They have concerns regarding the road being overburdened by excessive traffic, the number of houses in the area, and drainage difficulties experienced in the area. All testified that they enjoyed the remoteness of the area and did not want it despoiled by further development.
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.

## RATIONALE

Appeals from any decision of the Washington County Planning Commission to this Board under the Adequate Public Facilities Ordinance (the “APFO”) are *de novo*. This Board may grant a variance from the APFO’s requirements if all of the following factors are met: (1) the requirements imposed by the Ordinance would result in extraordinary hardship; (2) the physical features and characteristics of the proposed plat or site plan are such that a waiver would not impair the intent and purpose of the requirement; (3) the variance will not endanger or present a threat to the public health, safety, or welfare; and (4) granting the variance would observe the spirit of the Ordinance and secure public safety and welfare. Section 3.6. “Extraordinary hardship” is defined as “a condition that exists when strict compliance with this Ordinance would result in an unusually and extraordinarily severe financial economic impact on the owner or developer.” *Ibid*.

In this action, Appellant seeks to subdivide four lots along an inadequate, narrow, gravel road. The Appellant can do this as of right if he paves the road and widens it to County standards. Such a proposition would cost about \$35,000. As an extraordinary hardship is required to grant an APFO variance, Appellant must show that development costs of \$35,000 spread over a four-lot subdivision are “an unusually and extraordinarily severe financial economic impact on the owner or developer.” We cannot so conclude. Appellant offered no evidence that improving the road to adequate standards would be cost prohibitive, especially in light of the fact that only 400’ of the road must be widened at an average cost of less than \$9,000 per proposed lot. When viewed in this light, such an expense appears to be a reasonable and not-unexpected cost of development along an antiquated gravel road. We see no reason why the condition of the road should remain substandard when a not-insignificant development of four lots is proposed to further burden it.

We cannot find that the subject request does not adversely affect the public health, safety, security, morals, or general welfare; 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 DENIED this 20th day of September, 2007.

BOARD OF APPEALS

By: Bert Iseminger, Chair