

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

GEORGE DUNHAM
9952 Downsville Pike
Hagerstown, MD 21740

Appeal No. AP2007-078

Appellant

OPINION

This action is an appeal from the Planning Commission's denial of a one lot subdivision without public road frontage, a request for a special exception to allow two dwellings on a proposed subdivision lot, and a request for a variance from the density requirement of 1 dwelling unit per 5 acres to 1 dwelling unit per 0.835 acres. The subject property is located at 9952 Downsville Pike, Hagerstown, MD 21740, is owned by the Appellant, and is zoned Agricultural (Rural).

A public hearing was held before a full Board on October 3, 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 subject property is a portion of the 94-acre farm now owned by the estate of the late Appellant.
2. Appellant's will specified that Ms. Vaters, occupant of the existing house on the proposed lot, was to receive "three-quarters (3/4) of an acre, more or less, (or such greater amount as may be required by zoning laws in effect at the time of my death) to include with the parcel subdivided the aforesaid residence now occupied by Willa Jean Vaters and to include within the parcel the existing trailer and swimming pool."
3. The proposed lot is 1.67 acres in area.
4. Ms. Vaters's house was built in the 1970s. The mobile home was located on the property in 1964.

5. An existing lane serves the farm, the proposed subdivided lot, and the former Clearview Nursing Home. The nursing home has a right-of-way over the lane, as will Ms. Vaters.

6. The proposed use is compatible with the existing neighborhood and conforms to the Comprehensive Plan.

RATIONALE

The Board has authority to grant a special exception pursuant to Section 25.2(b) of the Zoning Ordinance for Washington County, Maryland. A special exception is defined as “a grant of a specific use that would not be appropriate generally or without restriction; and shall be based upon a finding that the use conforms to the plan and is compatible with the existing neighborhood.” Section 28.62. A variance may be granted 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).

In this action, Appellant’s estate seeks approval for a “paper” subdivision of a lot that involves land uses that have been occurring since the 1970s. No more residences will be created by the grant of this appeal, but the existing home and trailer will be located on a distinct lot, rather than remaining a part of the 94-acre farm. Therefore, as the uses have been occurring in the same manner and at the same place for 30-some years, the proposed use is not 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. Likewise, grant of the variance allows the existing conditions to more properly comply with current zoning standards. Requiring strict compliance with the Ordinance serves no legitimate purpose because the current conditions have existed since the 1970s.

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 2nd day of November, 2007.

Conditions

1. A 50'-wide strip of land will be reserved for a possible future public street. If the street is constructed, then the right-of-ways shall be abandoned, vacated, and/or rescinded.
2. When Heather Winfield no longer lives in the mobile home, it shall be removed from the property.

BOARD OF APPEALS
By: Bert Iseminger, Chair