

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

MAURICE CARLISLE
19700 Barnesville Road
Dickerson, MD 20842

Appeal No. AP2007-082

Appellant

OPINION

This action is an appeal from the road width requirement under the Adequate Public Facilities Ordinance to widen Stottlemeyer Road extending from the project site to the north towards Black Roack Road and Maryland Rt. 66 for a proposed 17-lot subdivison. The subject property is located at along the easter side of Stottlemeyer Road at Black Rock Road, Hagerstown, MD, is owned by the Appellant, and is zoned Agricultural Rural.

A public hearing was held before a full Board on October 17, 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. Appellant seeks to subdivide the property into 17 lots.
2. Stottlemeyer Road has been deemed inadequate because there are two locations where it is less than 16' in width. The first inadequate section is about 140' long where the road makes a sharp bend. The second inadequate section is about 130' long and abuts the property at Stottlemeyer Road and Route 66.
3. The inadequate portions of the road fail by 4" to 7".
4. The existing public right-of-way is too small to allow the road to be widened to standards.
5. Acquisition of the required additional right-of-way cannot be easily accomplished.
6. Stottlemeyer Road is a relatively low-traffic volume road.

7. Development of the proposed lots would result in approximately 75% of the traffic generated traveling south towards Route 40, along that portion of Stottlemeyer Road that is wide enough to be deemed adequate.

8. Neighborhood residents testified in opposition to the appeal, noting that they did not want Stottlemeyer Road widened under any circumstances.

9. Failure to grant a variance will render Appellant unable to subdivide any property and will result in a constraint of his ability to put the property to its highest and best use.

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 a relatively minor variance of four to seven inches in road width. Seventy-five percent of the traffic generated by the expected development will use the adequate portion of Stottlemeyer Road. Moreover, additional right-of-way acquisition is not realistic, and even if it were, neighborhood residents testified that they did not want the road widened. Although one may always wish to have public thoroughfares built to modern superhighway standards, the reality and charm of living in a rural community means that motorists will have to exercise common sense as they motor along backroads that are less than superhighways.

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 this 16th day of November, 2007.

BOARD OF APPEALS

BY: Bert Iseminger, Chair