

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

JOHN F. & TERESA L. BARR
14663 NATIONAL PIKE
CLEAR SPRING, MD 21722

Appeal No. AP2007-083

Appellants

OPINION

This action is an appeal from the Planning Commission's denial of a one-lot subdivision without public road frontage the road width requirement under the Adequate Public Facilities Ordinance to widen Stottlemyer Road extending from the project site to the north towards Black Roack Road and Maryland Rt. 66 for a proposed 17-lot subdvidison. The subject property is located along a private lane off of the south side of Route 40 approximately 1/2 mile west of Ridge Road, Clear Spring, MD, is owned by the Appellants, 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. Appellants propose creation of a one-lot immediate family member subdivision.
2. Appellants' daughter plans to construct a residence on the new lot.
3. The lot will be 1.99 acres in area.
4. There will be approximately 64 acres of remaining lands.
5. The lot will have an easement over an existing lane for ingress and egress.
6. This proposal meets all of the criteria of Subdivision Ordinance Section 405.11.B for an immediate family member exemption except for the requirement that the "private road

or right of way serve an existing residence on the same property....”

7. 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. The proposed use is compatible with the existing neighborhood.

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. Where the subdivision of land is solely for transfer to a member or members of the immediate family of the owner of the lot of record, and where the subdivided lots will front on a private road or right of way existing at the time of the original parcel’s acquisition by the current owner, when: (1) the private road or right of way is solely contained within the boundaries of the original parcel of land; (2) the private road or right of way serves an existing residence on the same property, and the land must meet the definition of agricultural purposes as defined in Article II, Section 202.3 of the Subdivision Ordinance; (3) the subdivided lots must be immediately adjacent to the private road or right of way; and (4) not more than one (1) lot may be conveyed to any one member of the immediate family. 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 this appeal, Appellants have successfully demonstrated their compliance with the intent and spirit of the family member exception of 405.11.B. Each of the enumerated criteria is met save for the requirement that the existing lane serve an existing residence. This is of no moment, as requiring strict compliance with that provision would serve no public or private purpose. 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. The proposed use is a permitted, appropriate use of the land, and the grant

of the requested relief does not nullify the purpose of the subdivision regulatory scheme.

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 15th day of November, 2007.

BOARD OF APPEALS

BY: Bert Iseminger, Chair