

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

MICHAEL MILLER
1561 Clover Hill Lane
Knoxville, MD 21758
Appellant

Appeal No. AP2007-102

OPINION

This action is an appeal to remove a condition placed on the grant of an appeal to allow for subdivision of the property in case no. AP2006-103 requiring an immediate family member to reside in the dwelling for 10 years from the issuance of the occupancy permit for the proposed residence. The subject property is located at 1561 Clover Hill Lane, Knoxville, MD 21758, is owned by the Appellant, and is zoned Environmental Conservation.

A public hearing was held before a full Board on January 2, 2008. The Appellant offered evidence and testimony in support of the appeal. No opposition was presented to this 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. This action was the before the Board in AP2006-103 after the Planning Commission denied Appellant's request to subdivide the subject property because it lacked public road frontage. The Finding of Facts from that case are incorporated herein by reference.¹

¹The most-salient facts to this appeal are as follows:

1. Appellants plan to create a lot that they will sell to their sister.
2. The property will have access to public roads via a right-of-way.
3. The property's topography is best described as a being a gentle or rolling slope.
4. Appellants have no plans for further subdivision.
5. The total property is 45 acres in area, and the remaining lands are wooded.

2. Our permission to subdivide the property was conditional.²

3. Appellant's plan to transfer the newly-created lot to his sister failed because she could not secure financing on satisfactory terms and has failed to consummate the conveyance.

4. The subject property, and the newly-created parcel, would be served by a paved right-of-way that serves about five residences.

5. No basis was given for removing the "immediate family member only" condition, other than the convenience of Appellant and his attempt to recoup his surveying and engineering fees.

RATIONALE

The Subdivision Ordinance requires that any newly-created lot must have 25' of road frontage. Section 4.05.11.B. Certain exceptions are allowed for transfers to immediate family members of the developer under certain conditions: (1) when transfer of the land is to a member or members of the immediate family of the owner of the lot of record; (2) where 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; (3) where a private road or right of way is must be contained solely within the boundaries of the original parcel of land; (4) when the private road or right of way serves an existing residence on the same property; (5) where the land meets the definition of agricultural purposes as defined in Article II, Section 202.3, of the Subdivision Ordinance; (6) where subdivided lots are immediately adjacent to the private road or right of way; and (7) when not more than one (1) lot is conveyed to any one member of the immediate family. Section 405.11.B.1.

The Ordinance further provides that such a subdivision shall contain a statement on the plat, signed by the developer and the family member receiving the lot that: (a) certifies the intent of the owner to transfer the land only to a member of the immediate family. The name of the family member and their relationship to land owner should be specified on the plat; (b) expressly warrants that no conveyance of the lot will be made to anyone not a member of the immediate family for a period of ten (10) years without the approval of the

²Conditions:

1. For a ten-year period following the issuance of the occupancy permit, only immediate family members of the Appellants may reside in the dwelling to be constructed on the new parcel.
2. A sprinkler system will be installed in the residence to be constructed on the new parcel.
3. Further subdivision of the subject property is not allowed.

Planning Commission except as may be required to satisfy a mortgagee in case of loan foreclosure; and (c) absolves the County from responsibility for acceptance or maintenance of the private road or right of way (collectively, the “family member only” exception). *Id.*

Appellant herein essentially asks that we reconsider our decision in case no. AP2006-103. Our reversal of the Planning Commission’s disallowance of the creation of this landlocked parcel in that action was specifically based upon the provisions of Section 405.11.B.1. We excused Appellant from adherence to the provisions of the Subdivision Ordinance because we felt that his intention to subdivide a 45-acre parcel and convey a portion of it to his sister met the requirements for the “family member only” exception. Creation of the new lot would have had a *de minimis* impact on traffic volume, and the lot was of adequate size to support an additional residence. Now, Appellant asks us to ignore the requirements of not only Section 405.11.B.1, but the provisions of 405.11.B generally, which seeks to prevent the creation of new parcels without public road access. While we are more sympathetic to the desire of a family to help other close relatives by creating a lot served by a shared right-of-way, we cannot turn a blind eye when the Appellant wishes to create a landlocked parcel that could create disputes and engender litigation over access that could have been avoided with the appropriate planning and design or with denial of the initial request. Furthermore, the hardship claimed by the Appellant—that he may lose funds speculatively spent on engineering and surveying fees when he failed to secure a written agreement addressing same with his sister—is one wholly of his own making, and our removal of the condition in such a circumstance is inappropriate.

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 1st day of February, 2008.

BOARD OF APPEALS

By: Bert Iseminger, Chair