

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

MICHAEL D. EBY ET. AL.  
17022 Broadfording Road  
Hagerstown, MD 21740  
Appellant

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Appeal No. AP2008-008

OPINION

This action is a request for a variance from 100' from an existing structure housing animals to 71' on the left side and 89' on the right side and for a variance from the density requirement of 1 dwelling unit per 5 acres to 1 dwelling unit per 1.83 acres to create 2 lots for homes that now exist on one 3.78-acre parcel. The subject property is located at 17022 Broadfording Road, Hagerstown, Maryland, is owned by the Appellant, and is zoned Agricultural (Rural).

A public hearing was held before the Board on March 5, 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. Appellant plans to subdivide the existing 3.78-acre parcel into two lots—each with an existing dwelling—for conveyance to his children.
2. The dwellings were constructed prior to the adoption of zoning in Washington County.
3. When the 3.78-acre parcel was created by subdivision by a prior owner, the applicable setbacks were not considered because the barn was not used to house animals.
4. The Appellant houses 812 animals in the barn.

5. No one testified in opposition to this request.

#### RATIONALE

This Board has authority to grant a variance 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).

Appellant's request to subdivide the property and house animals in the existing barn is a reasonable and permitted use of the property and its attendant structures. The dwellings predate the adoption of zoning, and the parcel was created without consideration of using the barn for an agricultural purpose. The Appellant did not create the situation from which he now seeks relief. 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 WITH CONDITIONS AS SET FORTH BELOW this 4<sup>th</sup> day of April, 2008.

#### *Conditions*

1. No more than 30 animals may be housed in the barn.

BOARD OF APPEALS

By: Bert Iseminger, Chair