

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

DAVID & JUDY GRIER
20220 Jefferson Boulevard
Hagerstown, Maryland 21740
Appellants

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Appeal No. AP2008-026

OPINION

This action is a request for a variance from the Planning Commission's determination that a proposed one-lot subdivision be denied based upon inadequate road width under the Adequate Public Facilities Ordinance (*APFO*). The subject property is located at 20220 Jefferson Boulevard, Hagerstown, Maryland, is owned by the Appellants, and is zoned Agriculture.

A public hearing was held before the Board on May 21, 2008. The Appellants offered evidence and testimony in support of the appeal. Opponents presented evidence and testimony against 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. Appellants seek to subdivide the subject 33.2-acre property.
2. The Remaining Lands, 17.02 acres in area, border Trovinger Mill Road, which is deemed "inadequate" due to its width.
3. The Remaining Lands are a Par 3 golf course.
4. Immediately opposite the Remaining Lands across Trovinger Mill Road, a 25-lot subdivision named Regent Park has received preliminary plat approval.
5. The developer of Regent Park will bring Trovinger Mill to adequate standards.
6. If the Appellant had to bring Trovinger Mill into compliance along the subject

property, it would cost approximately \$25,000.

7. The subject property is within the Urban Growth Area.

8. The proposed subdivision will not adversely affect the floodplain or drainage patterns of the property.

9. If the Remaining Lands were further subdivided, they could yield 30 lots, but percolation test results will likely reduce that number to 12 large lots.

10. Several residents testified in opposition to this appeal. They voiced concerns about the inadequate nature of Trovinger Mill Road, traffic volume, and runoff and drainage. Opposition was also voiced to general development in the area, and the specter of a 17-acre development in particular.

11. In rebuttal, the Appellant noted that water management would be addressed during any subsequent site planning process, and noted that if this property were developed before Regent Park, then Trovinger Mill's inadequacies would have to be addressed.

12. No alteration of the floodplain will occur as a result of the granting of this appeal.

RATIONALE

Appeals from any decision of the Washington County Planning Commission to this Board under 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 case, Appellants propose a subdivision of the property but are unsure of the ultimate use of the Remaining Lands, which are currently used as a golf course. A 25-lot subdivision is being built opposite the course, and the build-out of that subdivision will

result in the improvement of Trovinger Mill Road. Conversely, if that doesn't occur, or if Appellants develop the remaining lands first, then they will have to undertake the required road improvements. In the end, any development along Trovinger Mill Road will result in the required road improvements, and the objective of the APFO will be achieved. Therefore, our allowing this subdivision to proceed will not thwart the ultimate objective of improving Trovinger Mill before development occurs.

Furthermore, we fail to see how this subdivision will negatively impact the drainage issues in the area. At this point, Appellants have no ultimate plans for the property, and this subdivision will simply place the golf course on a separate parcel from the driving range. Evidence was presented that the floodplain would not be impacted as a result of this subdivision. Although we note opponents reluctance to have any further development in the area, we cannot conclude 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 19th day of June, 2008.

BOARD OF APPEALS

By: Bert Iseminger, Chair