

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

D & G, LLC  
c/o Ed Schreiber  
Frederick, Seibert & Assoc., Inc.  
128 S. Potomac Street  
Hagerstown, Maryland 21740  
Appellant

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Appeal No. AP2008-029

OPINION

This action is an appeal from the Planning Commission's determination that a subdivision be denied based upon the inadequate road width of Casper Road under the Adequate Public Facilities Ordinance (*APFO*). The subject property is located along the west side of Casper Road, Hancock, Maryland and identified among the Planning Department records as Subdivision SV-08-009, is owned by the Appellant, and is zoned Environmental Conservation.

A public hearing was held before the Board on June 4, 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. The prospective purchasers of the subject property propose to subdivide the property to create a new lot for the construction of a residence for the son and his family. This will allow purchasers to care for their grandchildren and will allow the son's family to care for the purchasers, who have health problems.
2. Making Caspar Road adequate would result in significant expenses, including road widening, road straightening, embankment removal, tree removal, and guardrail relocation.

3. Appellant estimates that asphalt expense alone would be in the neighborhood of \$25,000; inclusion of all associated costs would raise the total costs of adequacy to around \$100,000.

4. Caspar Road is a narrow, low traffic volume road used predominately by local residents in six homes.

5. If granted, this appeal results in the net creation of one lot.

6. The property and new lot will share a common entrance, and traffic volume generation will be insignificant.

7. Only two other residences are beyond the proposed common drive further down Caspar Road.

8. No one testified in opposition to this request.

#### RATIONALE

The Subdivision Ordinance states: "All final plats shall meet the requirements and standards of the Adequate Public Facilities Ordinance. A final plat shall not be approved if it does not meet the requirements and standards of the Adequate Public Facilities Ordinance." § 315.2. The APFO provides that, "In instances where the existing county road is determined to be below the minimum standards as set forth in Section 4.3, the Planning Director, acting on behalf of the Planning Commission, shall disapprove any proposed application for new development." § 4.4. Both the Subdivision Ordinance and the APFO allow for variances to be granted by this Board. §§ 107 & 109; and 3.6, respectively.

In this appeal, we find that the Appellant has met the burden placed upon it in this request for a variance from the strictures of both Ordinances. First, an effort to widen the road by the Appellant would result in an extraordinary fiscal hardship for minimal practical benefit. Second, the physical features and characteristics of the proposed lot are such that a waiver would not impair the intent and purpose of the requirement. The topography of the property presents significant challenges that would result in project expenses totaling around \$100,000, a sizable sum for the allowance of the creation of a lot that would support one additional residence. The road is primarily used by local residents, and only two houses are located further down Caspar Road from the property, and traffic generation will be insubstantial.

Furthermore, we conclude that allowing this request will not increase traffic on the affected road to the extent that the public health, safety, or welfare would be threatened or endangered, as the result of this appeal is to allow the construction of only one additional residence. 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. For all of the foregoing reasons, we believe that this variance observes the spirit of the Ordinance and secures public safety and welfare. Accordingly, this appeal is hereby GRANTED WITH CONDITIONS this 2<sup>nd</sup> day of July, 2008.

*Conditions*

1. The residence to be constructed on the lot created by this subdivision shall be occupied by an immediate family member of the owner of the "parent" parcel for a period of ten years from the date of issuance of the certificate of occupancy.
2. No further subdivision of the original or newly-created parcel will be allowed.

BOARD OF APPEALS

By: Bert Iseminger, Chair