

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

RICHARD P. SHOWE ET AL.
14015 Spickler Road
Clear Spring, MD 21722
Appellant

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Appeal No. AP2008-034

OPINION

This action is an appeal from the Planning Commission's denial of the proposed creation of two new residential lots for immediate family members without public road frontage as part of a proposed four-lot subdivision. The subject property is located at 14015 Spickler Road, Clear Spring, Maryland, is owned by the Appellant, and is zoned Agricultural (Rural).

A public hearing was held before the Board on July 16, 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 proposes creation of a four-lot subdivision, and two of the lots will be for immediate family members and will not have public road frontage.
2. The original property was a 115-acre farm.
3. The subject two lots would front on an existing lane owned by the Appellant.
4. The lane now serves an unmanned radio tower.
5. Appellant had difficulty getting other areas on the original parcel to pass a percolation test.
6. Some opposition was presented to this request. Opponents' concerns cited drainage

difficulties and traffic concerns in the area, sinkholes in the neighborhood, and a general aversion to new residences in the immediate community.

7. The Engineering Department advised that the existing entrance falls below minimum sight distance requirements due to physical obstructions and curves. The Department further advised that the Spickler/Hicksville road network was of inadequate width to serve the proposed subdivision.

8. The Planning Commission noted its strong opposition to the proposed subdivision and remarked that several alternatives may exist that would obviate the need for any variances.

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. *See* § 405.11.B.1. 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 case, Appellant asks us to ignore the provision of the Subdivision Ordinance which allows for an exception to the road frontage requirement where the private road must serve an existing residence on the original parcel. § 405.11.B.1(b). Here, the road that is intended to serve the newly-created lots is an access lane for an unmanned communications tower. The road does not serve an existing private residence on the property, and therefore, the exception criteria cannot be met by this proposal.

Furthermore, we are concerned that the subdivision of this property in the manner proposed is not in keeping with the spirit and intent of the land development regulations in the County. The property is served by a series of inadequate roads and the proposed entrance to the residences is hindered with sight distance issues. Moreover, the manner in which the property is proposed to be divided leaves a remainder parcel which we fear will be sought to be developed in the future. In short, given the manner in which this subdivision is proposed, 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 by a vote of 5-0 this 14th day of August, 2008.

BOARD OF APPEALS
By: Bert Iseminger, Chair