

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

JASON GRESS & BARBARA BOEKLEN HUBERT
Appellants

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Appeal No. AP2008-048

OPINION

This action is a request for a special exception to place a second dwelling on a parcel improved with a principal dwelling and for a variance from the required density of 20 acres per dwelling unit to 14.94 acres per dwelling unit. The subject property is located at 19931 Toms Road, Boonsboro, Maryland,, is owned by the Appellants, and is zoned Environmental Conservation.

A public hearing was held before the Board on October 8, 2008. The Appellants 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. Appellants propose placement of a second dwelling on the subject property for Mr. Gress, Ms. Hubert's son.
2. The property is 29.8 acres in area.
3. Mr. Gress assists his mother with the operation of the farm.
4. Appellants don't want to subdivide the jointly-owned land because of the presumed inadequacy of Toms Road and because of their desire to maintain control of the property.
5. Appellant's neighbors have no objection to this request.
6. The proposal is compatible with the existing neighborhood and conforms to the Comprehensive Plan.

RATIONALE

The Board has authority to grant a special exception pursuant to Section 25.2(b) of the

Zoning Ordinance for Washington County, Maryland. A special exception is defined as “a grant of a specific use that would not be appropriate generally or without restriction; and shall be based upon a finding that the use conforms to the plan and is compatible with the existing neighborhood.” Section 28.62. A variance may be granted upon a showing of practical difficulty or undue hardship. Sections 25.2(c) and 25.56. “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).

In this matter, we find that the Appellants have met their burden for both the special exception and the variance. The subject property is of adequate size to support a second dwelling, and it will be occupied by Mr. Gress who assists with the operation of the farm. The Zoning Coordinator has opined that the proposed exception is compatible with the Comprehensive Plan, and we have found that the proposed use would not be incompatible with the surrounding neighborhood. Traffic generation will not be overly burdensome. 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 A CONDITION by a 5-0 vote.

Condition

1. The second dwelling may only be occupied by an immediate family member of Mr. Gress or Ms. Hubert; once said occupancy by an immediate family member ceases, the second dwelling shall be subdivided into its own parcel.

BOARD OF APPEALS
By: Bert Iseminger, Chair

Issued: November 6, 2008