

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

FOUNTAINVIEW LLC  
Appellant

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Appeal No. AP2008-056

OPINION

This action is a request for a variance from the 20,000 sq. ft. minimum lot area to 7,239 sq. ft. and from the minimum lot width of 50' to 48.09' for proposed Parcel A of a future subdivision and a variance from the minimum 20,000 sq. ft. minimum lot area to 7,215 sq. ft. and from the minimum lot width of 50' to 47.94' for proposed Parcel B of a future subdivision for the purpose of creating lots for semi-detached dwellings. The subject property is located at 18719 and 18721 Mesa Terrace, Hagerstown, Maryland, is owned by the Appellant, and is zoned Agricultural.

A public hearing was held before the Board on November 19, 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 seeks to reduce lot area and lot width for the purpose of subdividing property to allow for the construction and sale of semi-detached dwellings.
2. The property is part of the Mission Hills subdivision, created in 1964 with 10,000 sq. ft. lots, prior to the adoption of zoning in the County.
3. The property has since been mistakenly classified as being subject to the Fountainview PUD.
4. Similarly-sized lots in the neighborhood have been granted similar relief.

5. The grant of the requested relief will not disrupt the character of the neighborhood.
6. No one opposed 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).

The requested relief is sought to allow the creation of separate lots for semi-detached dwellings. The housing type and lot size are consistent with the Mission Hills neighborhood, and relief is appropriate. The proposed use is a reasonable use of the property. The hardship faced by Appellant is not of Appellant's own making, as the parcels are existing, non-conforming lots, platted prior to the adoption of zoning. For the same reasons, a lesser variance would not provide the necessary relief. There is no evidence that the proposed use is 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. In short, the proposed use is an appropriate use of the subject property and is compatible with the existing neighborhood.

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 by a 4-0 vote.

Issued December 19, 2008.

BOARD OF APPEALS

By: Bert Iseminger, Chair