

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

GARY AND SUSAN WINGERD
Appellants

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Appeal No. AP2009-008

OPINION

This action is a request for a special exception to construct a second dwelling on a parcel improved with a dwelling and for a variance from the density requirement of one dwelling unit per 5 acres to one dwelling unit per 1.28 acres. The subject property is located at 9107 Jordan Road, Fairplay, Maryland, is owned by the Appellants, and is zoned Agricultural (Rural).

A public hearing was held before the Board on February 18, 2009. The Appellant offered evidence and testimony in support of the appeal. An opponent testified against the 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 want to build a second residence on the subject 2.55-acre parcel for their son.
2. The new residence will share a well with the existing residence.
3. Appellants offered no reason as to why the subject property could not be subdivided and the new residence placed on the newly-created parcel.
4. Appellants requested reconsideration of our denial, which we declined to approve, because Appellants have failed to explore whether their intended goal can be achieved by way of a subdivision of the property.

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.

In this case, Appellants seek authority to permit a second residence on the subject property. They offer no compelling reason as to why this special exception should be granted, as it appears to the Board that Appellants could secure their goal of an additional residence by subdividing the subject property. The Zoning Ordinance is clear in its preference for one principal use per parcel, unless compelling circumstances exist for the grant of a special exception. No such circumstances have been identified here. Appellants' declination of the immediate family member only condition is irrelevant because the Board's denial of this special exception is based on the fact that subdivision of the parcel appears feasible. As Appellants failed to meet their burden for a special exception, we have no reason to reach the variance issue.

Weighing the totality of the facts, testimony, and evidence before us, 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 3-2 vote.

BOARD OF APPEALS

By: Bert Iseminger, Chair

Issued: March 20, 2009