

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

DANIEL WILEY  
Appellant

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Appeal No. AP2009-014

OPINION

This action is a request for a variance from the density requirement of 1 dwelling unit per 20 acres to 1 dwelling unit per 2.17 acres to create a two-lot subdivision from a parcel currently improved with two dwellings. The subject property is located at 14310 Pen Mar/High Rock Road, Cascade, Maryland, is owned by the Appellant, and is zoned Environmental Conservation.

A public hearing was held before the Board on April 1, 2009. 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 subdivision of the subject 4.3-acre lot.
2. The lot is unusually shaped and is improved with two dwellings.
3. Appellant has lived on the subject property for about 30 years.
4. Appellant's son lives in the property's second dwelling and has for five years.
5. Appellant plans to convey the portion of the property with the second dwelling to his son, and bequeath the remainder of the property to his other son.
6. The most-affected neighbors are relatives of Appellant, and have no objection to this request.

7. No one testified in opposition to this request, and reviewing agencies took no exception to the request.

#### RATIONALE

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 Appellant has met his burden for the variance. The second dwelling was allowed by special exception in AP2002-007. The subject property is of adequate size to support the proposed uses. It is unique in that it unusually shaped, and granting this variance will allow for the continued use of both residences. Allowance of the subdivision, which is the practical result of the grant of this variance, will make for more alienable properties that are compatible with others in the neighborhood. Furthermore, the proposed relief is not inconsistent with the Comprehensive Plan. 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. For these reasons, we find that the grant of this variance upholds the spirit of the Ordinance.

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 5-0 vote.

BOARD OF APPEALS  
By: Bert Iseminger, Chair

Issued: May 1, 2009