

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

LEWIS TRUAX
Appellant

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Appeal No. AP2009-044

OPINION

This action is a request for a special exception to allow an additional dwelling on a parcel already improved with two dwellings and for a variance from the density requirement of one dwelling unit per 20 acres to one dwelling per 3.448 acres. The subject property is located at 3853 Resley Road, Hancock, Maryland, is owned by the Appellant, and is zoned Environmental Conservation.

A public hearing was held before the Board on September 30, 2009. 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 approval for another dwelling on the subject property—a mobile home for his son.
2. There are two homes on the property; this would be the third.
3. Appellant and his mother live in the two existing homes.
4. Appellant doesn't want to subdivide the property because he wants to keep it in the family.
5. The mobile home will have its own well and septic.
6. The rest of the property is used for hog and crop production.
7. There are no plans for future conveyances or subdivision of the property.
8. The property is located in a very rural area.

9. The proposed use conforms to the Comprehensive Plan and is compatible with the existing neighborhood.

10. No one testified in opposition to this request.

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).

Grant of a special exception is appropriate where the proposed use will have no greater “adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” *Schultz v. Pritts*, 291 Md. 1, 15 (1981). In the instant appeal, Appellant proposes to third dwelling on the property for his son, one that will be removed when it is no longer occupied by an immediate family member. Residential use is a principally permitted use in the district. In this matter, we find that the Appellant has met his burden for the variance and the special exception. The subject property is of adequate size to support another non-permanent dwelling. 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. Strict compliance would unreasonably permit the addition of the mobile home without significantly advancing the purposes of the Ordinance, especially given the very rural area of the neighborhood. 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 WITH THE CONDITION AS SET FORTH BELOW by a 5-0 vote.

Condition

The mobile home shall only be used as a dwelling for an immediate family member and shall be removed when it is no longer used as such.

BOARD OF APPEALS

By: Bert Iseminger, Chair

Date Issued: October 30, 2009