

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

KEVIN GRAFF
Appellant

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Appeal No. AP2009-046

OPINION

This action is a request for a variance from the minimum 100' right side yard setback to 70' to house 20 horses in an existing structure. The subject property is located at 16715 Broadfording Road, Hagerstown, Maryland, is owned by the Appellant, and is zoned Environmental Conversation.

A public hearing was held before the Board on September 16, 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 proposes to subdivide a 1.03-acre lot with an existing dwelling from the subject 16.38-acre parcel.
2. The remaining lands are improved with an existing barn (the subject of this variance request) and a mobile home.
3. The existing dwelling is over 100' from the barn, but the proposed property line is only 70' from it.
4. There are about 20 horses housed on the property.
5. The dwelling and structures were built prior to the enactment of zoning.
6. No one testified in opposition to 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).

In this matter, the property is of adequate size to support the proposed use and has supported it for some time. Moreover, the size and shape of the lot and the location of the existing structure thereon necessitate this variance. Strict compliance is impractical as the structures already exist on the lot and predate the implementation of zoning. This appeal is essentially meant to "bless" the existing circumstances so that a subdivision may proceed, and denying the requested variance would serve no practical purpose. 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 all of these reasons, we feel that the grant of this request advances the spirit and purpose 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.

BOARD OF APPEALS

By: Bert Iseminger, Chair

Date Issued: October 16, 2009