

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

JAMES & TERRIE VICKERS  
Appellants

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Appeal No. AP2009-049

OPINION

This action is an appeal from the Planning Commission's denial of a subdivision due to inadequate road width. The subject property is located along the west side of Roberts Road approximately 1,600' from its intersection with McFarland Road, zoned Environmental Conservation.

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. This parcel has a long history before the Board. The Planning Commission originally approved the creation of this parcel as "not for development" pursuant to the simplified plat procedure set forth in the Subdivision Ordinance, and this Board approved the Commission's action. Thereafter, the Circuit Court determined that creation of this proposed lot did not meet the standards for the simplified plat process, and directed Appellant's to pursue a standard subdivision of the property. They have done so and this property is again before us for a variance from the strictures of the Adequate Public Facilities Ordinance concerning inadequate road width.

2. Controversy exists as to the public or private nature of Roberts Road. This Board has neither the authority nor the expertise to conclusively establish the nature of the Road. However, for the purpose of this appeal, the Board will consider Roberts Road to be a public road that falls under the jurisdiction of the Adequate Public Facilities Ordinance and which would provide the proposed lot with public road frontage. The County's Director of Public Works has opined that the road is public in nature, is included in the County's road inventory, and is maintained by the County at taxpayer expense. The road is open to public travel and is posted with a 20 mph speed limit.

3. The road is wide enough for two cars to pass, and no businesses, churches, or places of public gathering are located along it.

4. Nine homes are located along Roberts Road.
5. Appellants have no intention for further subdivision of the subject property, and the lot is currently unimproved.
6. Appellant's paid \$36,000 for the proposed lot.
7. The cost of bringing Roberts Road to "adequate" standards is estimated to be \$287,000, assuming that the necessary rights-of-way could be acquired. Moreover, trees, rocks, and slopes would hamper road widening efforts.
8. Opponents to the appeal, all residents who now live along Roberts Road, testified that the road has blind knolls and inadequate passing area, and that any intensification of traffic on the road is a threat to public safety. The further advanced the argument that Roberts Road is a private road and ineligible for the relief requested.
9. In rebuttal, Linda Swain Wolfe testified that she has lifelong familiarity with Roberts Road and that it was adequate for the passage of delivery trucks, police cars, and fire and emergency vehicles.

#### RATIONALE

As a threshold matter, opponents to this appeal argue that this issue is not ripe for adjudication because all of the formal requirements of Section 303 of the Subdivision Ordinance have not been met. Specifically, they argue that because full-blown engineering plans have not been submitted, this appeal should not be considered. We find that challenge unpersuasive. It has long been the practice of the Planning Commission to allow "application" for a subdivision with APFO problems to be initiated by letter request so that the threshold issue of APFO compliance can be addressed prior to requiring an applicant to go to the considerable expense of securing full-blown design plans that may be ultimately denied because of the APFO issue.

Next, opponents argue that Roberts Road is a private, not public, road, so the APFO's adequacy standards don't apply and APFO variance relief is ineligible in this circumstance. They further argue that because Roberts Road is private, the lot should have been denied for lack of public road frontage. As set forth in the above findings of fact, this Board is without authority to determine the legal status of Roberts Road. However, for us to decide this appeal, we must determine that the APFO applies such that variance relief may be granted. We are persuaded that based on the testimony before us, the position of the County, and our site visit to the property, Roberts Road is public in nature and eligible for

variance relief.

Finally, reaching the issue, the Section 3.6.1 of the APFO provides that “The Board of Appeals may grant a variance from the requirements of this Ordinance only if the variance meets the following requirements: (a) The requirements imposed by the Ordinance would result in extraordinary hardship as defined in Section 2.3.9; (b) The physical features and characteristics of the proposed plat or site plan are such that granting a variance would not impair the intent and purpose of the requirement; (c) The variance will not endanger or present a threat to the public health, safety, or welfare; and (d) Granting the variance would observe the spirit of the Ordinance and secure public safety and welfare.” An “extraordinary hardship” is “a condition that exists when strict compliance with this Ordinance would result in an unusually and extraordinarily severe financial economic impact on the owner or Developer.” Section 2.3.9.

It is evident that strict compliance with the ordinance would result in an “unusually and extraordinarily severe financial economic impact on the owner or Developer.” The cost of acquisition of the proposed property was \$36,000, while the cost to bring the road to adequate standards would be \$287,000. This is an extraordinary cost, especially when it is unclear if any residential use will ever be made of the property. The property was originally proposed for recreational purposes, and requiring substantial road construction simply to allow subdivision and purchase of the parcel is a severe financial hardship.

Moreover, given the *de minimis* impact that one additional lot would have along a road already serving nine residences, the grant of this variance will not impair the intent and purpose of the road width requirement. The testimony showed that cars could pass along the road and that delivery trucks and emergency vehicles can transverse it without difficulty. The speed limit is a modest 20 mph, and we conclude that granting this variance will not impair public health, safety, or welfare. Finally, given each of these reasons, we conclude that granting this variance observes the spirit of the Ordinance and secures public safety and welfare. The overarching purpose of the APFO is to see that new development is supported by existing or future public infrastructure; it is not to stop all development. Here, Appellants have been required to pursue a standard (not a “not-for-development” or simplified) subdivision to purchase this property. Any use of the property by them would result in a minimal impact on traffic volume, and the burden of requiring that the road be made “adequate” would capsize any impact that creation of this subdivided lot may be expected to produce.

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: November 25, 2009