

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

JOHN & AMANDA SEABOLT
Appellants

Appeal No. AP2010-004

OPINION

This action is a request for a variance from the minimum 100' setback from an existing structure housing animals to a 77' left side yard setback and 16' rear yard setback. The subject property is located at 8820 Sharpsburg Pike, Fairplay, Maryland, is owned by the Appellant, and is zoned Rural Village.

A public hearing was held before the Board on February 24, 2010. 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. Appellants seek approval to keep animals on the subject 1½ to 1¾ acre property.
2. Animals have been kept on the property since 2002. This fact has now been brought to the attention of the County, and the Appellants need zoning approval for the maintenance of the animals.
3. Approximately 3 bovines and 1 to 11 hogs will be kept on the property, as well 12 hens and 4 ducks, all or most of which are for the personal use of Appellants and their family.
4. Appellant has an approved Nutrient Management Plan for the keeping of animals.
5. Neighbors testified in opposition to this appeal, and the objections generally centered around the keeping of any animals on the property. Their opposition centered on animal smells, waste issues, well contamination from manure, and the risks of animals getting loose.

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).

This is an action for variances and not for a special exception. The keeping of livestock on the subject property is a permitted accessory use, one that this Board has no authority to prevent or curtail. If this request were denied, the Appellant could still lawfully maintain two animals on the property. The addition of a third domestic animal to the property triggers the application of § 22.94. That section requires that animal husbandry facilities (which create 6,000 tons or less of manure annually) be set back 100’ from the property line.¹

The Appellants’ proposal is a reasonable and permitted accessory use of the subject property. The property is of adequate size to support the proposed use, and traffic volume on nearby roadways will be unaffected. The Appellants have an approved Nutrient Management Plan, prepared under the guidance of the Soil Conservation District. Moreover, the size and shape of the lot, and the location of the existing structures thereon, necessitates these variances. Strict compliance is impracticable given these circumstances, and a lesser relaxation is not possible for the same reasons. 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. Therefore, this appeal is hereby GRANTED by a 5–0 vote. However, because of

¹ If there were only two animals, then the structure would be a “private stable” (an accessory structure designed for the shelter, feeding, and care of no more than two domestic animals, maintained on the property as pets or for domestic use as distinguished from agricultural or livery stables) subject to one hundred (100) feet setbacks from any dwelling, school, church, or institution for human care not located on the same lot. Article 28A; § 4.13.

the concerns advanced by the Appellants' neighbors and Appellants' apparent confusion over the details and import of the Nutrient Management Plan, we CONDITION our approval as follows:

Condition

1. The Appellants must meet with agents of the Soil Conservation District and review—and update if necessary—the Nutrient Management Plan for the subject property, particularly concerning the mitigation of potential waste runoff from the property. Appellants shall meet with the Soil Conservation officials within 30 days of the issuance of this opinion, assuming that the schedule of the Soil Conservation officials can accommodate same. Otherwise, the meeting shall occur as soon as practicable.

BOARD OF APPEALS
By: Bert Iseminger, Chair

Date Issued: March 26, 2010