

BOARD OF APPEALS

January 6, 2021

AGENDA

DOCKET NO. AP2020-036: An appeal made by A. Christopher Cannon & Gerald Dayhoff from the Planning Commission's denial of the creation of a two lot subdivision without public road frontage on property owned by the Appellants and located adjacent to 1227 Harpers Ferry Road, Knoxville, Zoned Environmental Conservation. 6:00 pm-
GRANTED

Pursuant to the Maryland Open Meetings Law, notice is hereby given that the deliberations of the Board of Zoning Appeals are open to the public. Furthermore, the Board, at its discretion, may render a decision as to some or all of the cases at the hearing described above or at a subsequent hearing, the date and time of which will be announced prior to the conclusion of the public hearing. Individuals requiring special accommodations are requested to contact Kathryn Rathvon at 240-313-2464 Voice, 240-313-2130 Voice/TDD no later than December 28, 2020. Any person desiring a stenographic transcript shall be responsible for supplying a competent stenographer.

Due to government regulations during the COVID-19 restriction, all hearing will take place virtually. No participants will be allowed to attend the hearing in person until further notice. The general public who wish to give testimony towards a case is **strongly encouraged to do so by writing a letter or by sending an email to the following:**

Katie Rathvon, Zoning Coordinator
80 W Baltimore St
Hagerstown, MD 21740
krathvon@washco-md.net

All letters and emails will be read during the hearing and placed on file as an official record of the case. If you would rather give a voice testimony and/or listen to the hearing, you can do so by teleconferencing. Using a phone, you can dial in at the scheduled time of the hearing to (301) 715-8592. When prompted use meeting ID code **936-5340-6468** and meeting password **185254**. You also have the option to participate via live video or watch the hearing live. Using a computer or smart phone, go online to www.zoom.us and use the same meeting ID number and meeting password to access the hearing. Again, you are strongly encouraged to submit your testimony by letter or email.

The Board of Zoning Appeals reserves the right to vary the order in which the cases are called. Following the Applicant's case in chief, other individuals may receive three (3) minutes to testify, except in the circumstance where an individual is representing a group, in which case said individual shall be given eight (8) minutes to testify.

Paul Fulk, Chairman
Board of Zoning Appeals

**BEFORE THE BOARD OF APPEALS
FOR WASHINGTON COUNTY, MARYLAND**

**GERALD DAYHOFF AND
ALWYNE CANNON**

Appellants

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Appeal No.: AP2020-036

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OPINION

Gerald Dayhoff and Alwyne Cannon (hereinafter “Appellants”) brings this appeal from a denial by the Planning Commission¹ of his request to modify the subdivision requirements to create a one (1) lot subdivision at the subject property. The subject property is located to the west of 1227 Harpers Ferry Road, Knoxville, Maryland, and further identified as Tax Parcel ID No. 11-009581; is owned by Appellants; and is zoned Environmental Conservation. The Board held a public hearing on the matter on January 6, 2021.²

This appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County and upon proper notice to the parties and general public as required.

¹ Whenever referenced herein, it shall include the Director and Zoning Administrator, Ashley Holloway, acting as the Planning Commission’s designee.

² Due to the COVID-19 pandemic, in-person access and contact for public hearings has been limited, especially in County buildings. In December 2020, the County transitioned to conducting quasi-judicial hearings exclusively by remote virtual hearing. All participants and witnesses, including the Board members and staff appeared via Zoom and the public at large were permitted to participate by telephone/video. All notices for the hearing provided the information necessary to call in and/or participate remotely and those who wished to participate were encouraged to make written submissions as well.

Findings of Fact

Based upon the testimony given, all information and evidence presented, and upon a study of the specific property involved and the neighborhood in which it is located, the Board makes the following findings of fact:

1. Appellants own the subject property located to the west of 1227 Harpers Ferry Road, Knoxville, Maryland, and further identified as Tax Parcel ID No. 11-009581.

The subject property is zoned Environmental Conservation.

2. The subject property consists of approximate fourteen (14) acres of wooded lands atop a steep hillside with rocky terrain. The subject property abuts Harpers Ferry Road on a brief, narrow straightaway before a slight bend in the road.

3. In 1995, the Planning Commission permitted a variance/modification to the subdivision requirements for the creation of a 50-foot by 400-foot panhandle access across property adjacent to the subject property. Said panhandle became the private driveway that now extends back from Harpers Ferry Road and provides access to the subject property.

4. In 1984, the Planning Commission permitted a variance/modification to the subdivision requirements for the creation of four (4) new lots without the required 100-foot separation between access points. The basis for the modification was cited as “no other means of access is possible due to topographic conditions.” Said modification led to the creation of the subject property.

5. The subject property has a reserved right-of-way over the private driveway for access at one (1) of three (3) access points. Appellants are only looking to utilize two (2) access points.

6. Appellants propose to subdivide the subject property, which is Lot 1, creating a new Lot 1 and a Lot 5. Each would get their own lot to build their family home,

in close proximity to their childhood homestead.

7. Appellants purchased the subject property in 2013 with the intention of building their family homes and relocating there.

8. The Ehrhardt family owns the adjacent property over which the private driveway is located. They support Appellants' proposed plan to subdivide.

9. On November 6, 2020, the Planning Commission issued correspondence through Director Holloway denying Appellant's requested subdivision. Appellants' timely filed this appeal.

10. There was no opposition presented to this appeal.

Rationale

Appellant seeks a modification of conditions set forth in the Subdivision Ordinance to secure approval of the proposed subdivision of two (2) acres for a family member. The Planning Commission, through the Director, denied the request as it did not comply with the conditions of the Subdivision Ordinance. Appellant noted this appeal pursuant to Section 25.4 of the Zoning Ordinance.

The Subdivision Ordinance

The Washington County Subdivision Ordinance provides for the configuration and orientation of lots, as well as sets forth the requirements for road frontage and access in Section 405.11. Specifically, Section 405.11 B.1 provides:

B. Every lot shall abut a minimum of twenty-five (25) feet, and shall have access to a road or street that has been dedicated to public use and accepted for public maintenance, except as follows:

1. The Commission may approve the subdivision of land solely for transfer to a member or members of the immediate family of the owner of the lot of record, where subdivided lots will front on a private road or right of way existing at the time of

the original parcel's acquisition by the current owner with the following conditions...

Section 405.11 B.1 goes on to enumerate seven (7) conditions that must be present for such a subdivision to be approved. In the instant case, only two (2) of the conditions are at issue, Section 405.11 B.1(a) and (b) which provide:

- (a) the private road or right of way must be contained solely within the boundaries of the original parcel of land,
- (b) the private road or right of way must serve an existing residence on the same property. The land must mee the definition of agricultural purposes as defined in Article II, Section 202.3 of the Subdivision Ordinance.

Appellant seeks a modification of all of subsection (a) and the first portion of subsection (b). The Planning Commission through delegation to the Director, denied subdivision approval based on the failure to meet the above conditions.

In the instant case, both conditions are complicated by inherent practical difficulties and extreme hardship resulting from the topography of the subject property. The existing private driveway is cut in a loose switchback design to address the steepness of the hillside and rocky terrain. The subject property is arguably even steeper as it abuts Harpers Ferry Road. The testimony from Triad Engineering was that creating a new access point at the subject property would create significate grading and maintenance issues. Moreover, it was unclear whether proper sight distance would exist to permit such a separate access point. It was noted that there are already sight distance issues with the existing private driveway.

In addition, the cost to create a separate access point would likely make developing the resulting lots financially impossible. Appellants testified that their mother lives in close proximity to the subject property and that it was always their dream

to build and relocate to be closer to family members. They purchase the subject property in 2013 for this purpose, and it has taken until now for them to be ready to move forward with the project. The costs and financial hardship imposed by compliance with the Subdivision Ordinance, would cripple their stated plans.

Clearly, the conditions imposed by the Subdivision Ordinance are to make sure that lots are not created without access. In this case, Appellants can alleviate that concern by virtue of the right-of-way that provides access to the subject property and the proposed subdivided lot. The Board finds this solution to be a reasonable and appropriate compromise, given that creating a separate access point for the subject property would be cost-prohibitive and an engineering nightmare. It also promotes the spirit of home ownership and familial relationships to unburden the process of developing unimproved land in this manner. Appellant's proposed modifications should be accepted, and the subdivision approval process should move forward.³

Accordingly, Appellants' appeal is SUSTAINED, and the request to modify the subdivision requirements to create a one (1) lot subdivision at the subject property is GRANTED, by a vote of 4-1. The application is granted upon the condition that the proposed use be consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: February 1, 2021

Notice of Appeal Rights

Any party aggrieved by a final order of the Authority in a contested case, whether such decision is affirmative or negative in form, is entitled to file a petition for judicial review of that order to the Circuit Court for Washington County within thirty (30) days of the date of the order.

³ The Board did express concerns for emergency vehicle access on the private driveway. Although not a dispositive issue, the Board raises the concern herein with the understanding that the Planning Commission will address the issue during further review of the proposed project.