

BOARD OF APPEALS

March 3, 2021

AGENDA

DOCKET NO. AP2021-005: An appeal was made by James & Leslie Cochran for a variance from the maximum density of 1 dwelling unit per 30 acres on land that is to be subdivided to 1 dwelling unit per 8.79 acres on property owned by the Appellants and located at 20130 Dogstreet Road, Keedysville, Zoned Preservation. 6:00 pm - **GRANTED with Conditions**

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 February 8, 2021. 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**

JAMES AND LESLIE COCHRAN

Appellants

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Appeal No.: AP2021-005

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OPINION

James and Leslie Cochran (hereinafter “Appellants”) request a variance from the maximum density requirement of one (1) dwelling unit per thirty (30) acres on land that is to be subdivided, to one (1) dwelling unit per 8.79 acres at the subject property. The subject property is located at 20130 Dogstreet Road, Keedysville, Maryland and is zoned Preservation. The Board held a public hearing on the matter on March 3, 2021.¹

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.

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 owns the subject property located at 20130 Dogstreet Road, Keedysville, Maryland. The subject property is zoned Preservation.
2. The subject property consists of approximately 17.58 acres, with a

¹ 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.

farmhouse which is rented and additional farm buildings. The subject property is immediately adjacent to approximately 60 acres of active farmland, also owned by Appellants.

3. Appellants propose to subdivide approximately two (2) acres to create a lot for their daughter to construct her principal residence.

4. The subject property previously had a mobile home in addition to the existing farmhouse. The mobile home was placed on the property in 2001 and has since been removed. The gravel and septic system which served the mobile home still exists.

5. Appellants actively farm the large tract of land immediately to the north of the subject property.

6. There is an existing driveway that serves the farmhouse, the farm buildings and provides access to the farm tract. The driveway crosses a flood plain and serves an access lane for the property.

7. The subject property has two (2) addresses from the period when there was both a farmhouse and mobile home on the property.

8. Appellants have no intention to market the property or to further subdivide for development.

Rationale

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56.² "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

² "When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive ("or"), Maryland courts generally have applied the more restrictive hardship standard to use variances, while applying the less restrictive practical difficulties standard to area variances because use variances are viewed as more drastic departures from zoning requirements." *Belvoir Farms Homeowners Ass'n, Inc. v. North*, 355 Md. 259, 276 n.10 (1999) (citations omitted).

the variance 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. § 25.56(A).

Practical difficulty and undue hardship are the result of a property being unique. "‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions." *North v. St. Mary’s Cnty.*, 99 Md. App. 502, 514 (1994.)

In this case, Appellants seek to reclassify the density for their property so that a second dwelling unit can be constructed for their daughter. Appellants intend to then subdivide approximately two (2) acres to serve as their daughter’s homestead lot. Under normal circumstances, such a subdivision would fall under the exemption provision for family members. However, the subject property is zoned Preservation, which restricts the density to one (1) dwelling unit per 30 acres.

Appellants testified that the variance request would allow the density that the property has operated at for most of the last twenty (20) years. Despite having adequate acreage in the farm tract to create this subdivision, Appellants stated that they did not want to disrupt the rich farmland which is actively farmed. Instead, they chose a rocky, otherwise unusable knoll to locate their daughter’s new home. Their intention was to maintain and preserve the agricultural nature of the property while also extending to their daughter, the benefits of property ownership. It is clear from the evidence that the resulting subdivision was designed to have the least disruption to the operation of the farm and to make use of existing access and the septic area. Appellants have appropriately minimized the effect of having two (2) dwelling units on the property.

Appellants testified that it would be unduly burdensome and impractical to force them to subdivide from the farm tract, when the subject property has portions that are unusable for anything except locating a home. Furthermore, subdividing the farm tract would contradict the purpose of the zoning designation to preserve agricultural uses. The Board finds that Appellants have met the criteria for a variance from the density requirements and therefore the variance should be approved.

The variance relief requested will restore Appellants to the practical position they were in when there was a mobile home on the subject property. These conditions existed without issue for years and the Board envisions no practical difference with their daughters' home. To address concerns raised by staff and in testimony during the hearing, it was suggested that upon approval of the variance, conditions be imposed regarding the subdivision exemption.

Accordingly, the request for a variance from the maximum density requirement of one (1) dwelling unit per thirty (30) acres on land that is to be subdivided, to one (1) dwelling unit per 8.79 acres at the subject property is GRANTED, by a vote of 5-0. The application is granted upon the condition that the proposed use be consistent with the testimony and evidence presented herein. The variance is also granted under the specific condition that the resulting subdivision be designated as the second exemption for purposes of lot subdivision.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: March 30, 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.