

Tax Map/Block/Parcel
No. 67-10-370
Case 5771

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: James R. Mudgett, et al
5007 Bushey Road
Sykesville, MD 21784

ATTORNEY: Clark R. Shaffer
73 East Main Street, Suite 1
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REQUEST: Appeal of the Planning Commission's Decision denying a proposed relocation of density in the matter of Hudson Forest Estates 4 (P-12-006).

LOCATION: The site is located from the North side of Liberty Road (Maryland Route 26) to an agriculturally zoned tract located on West Old Liberty Road, about 600' East of Freter Road, on property zoned "A" Agricultural in Election District 14.

BASIS: Code of Public Local Laws and Ordinances, Section 155.091(B)(1).

HEARING HELD: September 24, 2014

FINDINGS AND CONCLUSION

On September 24, 2014, the Board of Zoning Appeals (the Board) convened to hear the appeal of the Planning Commission's Decision denying a proposed relocation of density in the matter of Hudson Forest Estates 4 (P-12-006). Based on the testimony and evidence presented, the Board made the following findings and conclusions.

The applicant's proposal was designed to put 18 lots on 287 acres that the developer owns or controls which results in over 260 acres of farmland that is being preserved. The property is a mix of cropland and woods.

The Planning Commission had several meetings with regard to requests by Hudson Forest Estates. There were meetings on August 27, 2012, September 18, 2012, July 15, 2014, and July 30, 2014.

At the July 30, 2014 Planning Commission meeting, the action requested was set forth in the minutes as follows: “The plan is before the Planning and Zoning Commission for review of the concept plan of subdivision for a determination that in accordance with § 155.091 that the lots are located and sized so the agricultural land devoted to residential use is minimized and the amount of land retained for agricultural use is maximized. The plan proposes a transfer of lot yield from an agricultural zoned parcel to another agricultural zoned parcel.” At the conclusion of the meeting, the Planning Commission denied this request in a split three in favor to three in opposition vote. In addition, at the close of the July 30, 2014 Planning Commission meeting, the Commission members voted that the proposed development meets the transfer requirements of Section 155.091 as set forth below.

The concept plan was previously presented to the Commission at the September 18, 2012 meeting. The Commission did not act on the concept plan until a legal determination occurred on the transfer of the lot yield. The County Attorney has stated that the code permits the transfer from one parcel to another and the Code does not have a limitation to the number of roads that can be utilized in the transfer of the lot yield. The relevant section of the Code reads as follows:

“§155.091 SUBDIVISION IN THE AGRICULTURAL DISTRICT

(B) Utilization of adjoining tracts.

(1) When lots are created for residential purposes in the “A” District, the lots are to be located and sized so the agricultural land devoted to residential use is minimized, and the amount of land retained for agricultural use is maximized. The total density of adjoining tracts and legally created off conveyances may be used to comply with these standards, and the lots resulting from development of adjoining tracts may be located on one or more of the tracts. In computing density for purposes of this section, tracts which are subject to an Agricultural Preservation District agreement or easement may not be counted. Total number of residential lots shall be based upon yield from actual acres of various tracts.

(2) Where land on either side of a public road, or on either side of a strip dividing an original tract and owned in fee simple by a public utility, would otherwise be adjoining except for the existence of in fee public ownership of the road or public utility strip, such confronting tracts may be considered adjoining under this division (B). The tracts shall be considered adjoining only for the purpose of transferring density but not for the purpose of increasing density beyond what is otherwise allowed.

(3) Whenever density from a transferring tract is relocated onto one or more adjoining tracts, the transferring tract shall retain at least one residential building right or the transferring tract shall be combined with another tract or tracts unless modified by the Planning Commission.”

Based on an August 25, 2014 memorandum from Scott E. Graf, Comprehensive Planner, to the Board, the Bureau of Comprehensive Planning made “no comment regarding the appeal of the Planning Commissions’ split decision regarding the proper location of the subdivision proposal.

Dan Staley testified as an expert witness in land use design and surveying before the Board. He works with D.R.S. & Associates, land design consultants. He or his company prepared applicant exhibits 1-11. The 18 lots referred to in the applicant's proposal are set forth in Exhibits 1 – 4. The average lot size would be about 1.2 acres. He stated that Hudson Forest Estates 4 was surrounded by residential development on three sides. He pointed out where the best soil was for cropland via Exhibit 9.

Donald Lippy testified that he has been in the farming business for many years. He is an owner of Lippy Brothers Farms. The company has been in business since 1965. His company farms at 150 different farms in three Maryland counties: Baltimore, Carroll and Harford. He also has farm operations in Pennsylvania. Years ago he even had farm operations in Puerto Rico. He stated that his company farms between 8500 to 9000 acres of farmland. The Board accepted Mr. Lippy as an expert in the field of agriculture. He personally viewed the properties in question here. He noted that farming a little piece of farm land is difficult for bigger farming equipment. The fewer houses on land used for farming would be preferred by the farmer. There would be no houses on the proposed area. He stated that the proposed location to put the farmland was a good place. It would not be good to place the farmland where Hudson Forest Estates 4 is proposed to be built due to the residential nature of the area. He also stated that the closer a farm is to residents the more complaints there could be.

Lisa Leppo testified in opposition to the application. She owns a farm that is near the Mudgett property. She stated that a portion of the property needed for this development involved property owned by the father of the Mudgetts. The father's property and the other Hudson properties had no shared common property line. She stated that properties that touch each other are not necessarily adjoining. The granting of this request could establish a precedent in the County.

Lisa Lamb testified in opposition to the application. She stated that she received an April 16, 2012 letter from Clayton R. Black, Bureau Chief. Mr. Black wrote that "based on our research of the deeds, it is our conclusion that this property has no potential for the creation of off-conveyances or for the creation of residential subdivision lots." She also stated that eight graves were on the property. She stated that her father farmed the property in the 1980s. Her grandfather farmed the property before that. Mr. Mudgett bought the farm at a public auction. The neighbors were concerned about water issues, septic issues, and traffic issues involving site distances.

Brian Leppo testified in opposition to the application. He had farmed the property for the last eighteen to twenty years. He stopped farming it in the spring for the Mudgetts. His biggest concern was the creek bed at the bottom. He stated that there would be a lot of runoff. He further stated that the wooded area is level and would be a better location for farming.

Dan Andrews testified in opposition to the application. He was present on behalf of his mother, Shirley Andrews, whose home is near the property in question. His mother bought her property in the 1960s. He was especially concerned about traffic safety and site distance issues. He worked for the State Highway Administration as a land surveyor. He believes that the

residential lots should be placed in the bigger parcel and not in the proposed location for Hudson Forest Estates 4.

Oksana Klimova testified in opposition to the application. She stated that she was speaking for 100 people that signed a petition. She has lived in her house for eleven years. She stated that there had already been a sewage issue and a contaminated water issue at the location. She warned that water contamination was a very dangerous thing.

Melvin Baile testified in opposition to the application. He had invested twenty-five years of his life to land use issues in the county. He served on the Planning Commission for more than fifteen years. He stated that out of the 250 acres only 85 acres of the land was tillable. He stated that until this year the land was farmed (by Mr. Leppo.) He wanted the development to be created in the wooded area of the property. He noted that the existing master plan set forth that 100,000 acres would be tillable. The county obtained the 100,000 tillable acres through ag preservation.

The Board noted that the Concept Plan was subject to citizen involvement during a regularly held meeting of the Technical Review Committee on August 27, 2012. Several citizens were present and expressed opposition about the development. Key citizen comments and concerns were: this transfer locates the lots in one area while preserving the development in another; runoff may impact Piney Run Reservoir; percolation tests may be unsuccessful; concerns over impacts on the existing wells; steep slopes on the property; and stormwater from the proposed development could impact the adjacent driveway. A citizen also spoke about the headlights that would shine into her residence from traffic on Mudgett Court.

The Board granted the proposed relocation of density in the matter of Hudson Forest Estates 4 (P-12-006). The Board found that the soil capability map in Exhibit 9 clearly showed that the relevant standard was met. The Board further found that the applicant's proposal would result in a large preserved contiguous single tract or parcel of land located on the north side of Bushey Road, which land has soil characteristics and topography that is good for agricultural use and most of that tract is already used for agricultural purposes. The Board found that the tract preserved by Mudgett's cluster plan is not adjacent to any high density or even medium density residential developments, while the tract proposed to be used for lots is surrounded on three sides by existing residential development. The tract preserved has natural environmental features that are valuable and would be preserved by the plan. The Board agreed with the County Attorney opinion that the decision in reversing the Planning Commission in this matter was legal and that the applicant met the criteria in the code. The Board found that the Planning Commission erred by denying the request of the applicant here. The Board found that the proposed lots are located and sized so that the agricultural land devoted to residential use is minimized, and the amount of land retained for agricultural use is maximized. The Board found that tracts located on either side of a public road are to be considered adjoining. For all of the foregoing reasons, the Board granted the applicant's request.

The Board did not find that a long road going to the wooded area for farming would be appropriate and there would then be the added expense of clearing the trees and stumps for the

farmland. The Board also noted that there were also valid reasons for preserving the wooded land.

The Board was convinced that approving the applicant's application was consistent with the purpose of the zoning ordinance, appropriate in light of the factors to be considered and would not unduly affect the residents of adjacent properties, the values of those properties, or public interests. Based on the findings of fact made by the Board above, the Board approved the applicant's request.

Date

Brian DiMaggio, Chairman

Decisions of the Board of Zoning Appeals may be appealed to the Circuit Court for Carroll County within 30 days of the date of the decision pursuant to Article 66B, Section 4.08 of the Annotated Code of Maryland Rules of Procedure.

Pursuant to Section 158.133 (H)(3) of the County Code, this approval will become void unless all applicable requirements of this section are met. Contact the Office of Zoning Administration at 410-386-2980 for specific compliance instructions.