

Tax Map/Block/Parcel
No. 62-9-387
Case 5752

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Matthew Zimmerman & Susan B. Boyce
3801 Salem Bottom Road
Westminster, MD 21157

ATTORNEY: Clark R. Shaffer
73 E. Main Street
Westminster, MD 21157

REQUEST: Appeal of the Official Decision of the Zoning Administrator in Case ZA-1492 dated 18 March, 2014 for a reduction of a lot size from 3.0392 acres to 2.0832 acres.

LOCATION: The site is located at 841 Chanter Drive, Westminster, MD 21157, on property zoned "C" Conservation District in Election District 9.

BASIS: Code of Public Local Laws and Ordinances, Section 158.071 and 158.130(B).

HEARING HELD: August 26, 2014

FINDINGS AND CONCLUSION

On August 26, 2014, the Board of Zoning Appeals (the Board) convened to hear the appeal of the official decision of the Zoning Administrator in Case ZA-1492 dated 18 March, 2014 for a reduction of a lot size from 3.0392 acres to 2.0832 acres. Based on the testimony and evidence presented, the Board made the following findings and conclusions.

Matthew Zimmermann testified on behalf of the applicant. He has lived at his present address since 1990. He owns a nine acre farm in the county. His house and farm complex are included on the National Register of Historic Places. Applicant Exhibit 9. He also owns two parcels that are next to the farm, Parcel 2 and Lot 7. Applicant Exhibit 1. He testified that he purchased Parcel 7 in October 2013. There is a house on Lot 7. The rear of his farmhouse faces the Lot 7 property line and is fifty feet away from it. He wants to restrict the possible things that a neighbor could put fifty feet away from the rear of his house. He wanted to protect his view from whatever might happen on Lot 7 if there was a new owner. The applicant wants to extend the lot line on Parcel 2 to be even with the lot line on Parcel 7. Put another way he wants to square off his property with regard to the lot line in the rear of his house.

In order to address his concern about what could happen fifty feet from the rear door to his house, a conservation easement and restrictions in the deed were placed in it. Applicant Exhibit 10. The deed included the following restrictions for fifty years: no vehicles to be parked in restricted area; no buildings or structures may be erected in restricted area; no motorized machines of any kind with the exception of mowers may be operated in restricted area; and no removal of hardwood trees from restricted area. Mr. Zimmerman's desires were to guard against noises, nuisances, and things he did not want fifty feet away from his back door. He testified that he did not want to bring a lawsuit against a next door neighbor if there were violations to the deed restrictions. He believed that there would be more difficulty with enforcing an easement as opposed to fewer problems if he had fee simple ownership of the easement area. He wanted to forever end any questions about what could be done in the easement area with this request to the Board.

Mr. Zimmerman's counsel stated that there was no amended plat recorded for the conservation easement and restrictions. Without the amended plat, which would require approval of a government process involving the county, there were legal issues as to whether the deed was enforceable. In fact, the applicant's counsel stated that there is probably not a legally enforceable easement at that location now.

Al Stroud testified on behalf of the applicant. He is the owner of ALS, Inc. He was qualified as an expert in the area of land use planning. He testified about the preliminary plat of Huntfield. Applicant Exhibit 2. He noted that if the Board approved the applicant's request of removing .9 acres, that the remainder of the lot would still meet Health Department requirements. He stated that the lot was fairly flat, which was unique and unusual. He also testified that if the Board granted the applicant's request that the remaining portion of Lot 7 was compatible with the Conservation District. He also prepared and testified about Applicant's Exhibit 1. He met with Clay Black and Jay Voight (County officials) to investigate the prior zoning of the property in question. The preliminary plan was dated in 1976 and then the county rezoned properties thereafter. When the preliminary plan was in place the property in the area was zoned agricultural. A few years later the county zoned the area as Conservation.

Lisa R. Eckard testified on behalf of the applicant. She prepared Applicant Exhibit 11 and was found to be an expert in the area of property or land appraisals. She determined that the granting of approval for a reduction in lot size from 3.0392 acres to 2.0832 acres would not negatively impact the real estate values of neighboring properties. The new Lot 7 would conform to the general neighborhood. She did not believe that the change in the lot line would be detrimental to adjacent property owners. She noted that it would not be clear where the property line would be on Lot 7 without a plat or deed. She also testified that there are numerous lots within the subject's immediate neighborhood and general geographic marketing area which do not meet the minimum lot size requirement with the Conservation zoning district. As a result, while the subject property will not conform to the requirements of the Conservation zoned bulk requirements of 3 acres if the lot reduction is granted, it will be in general conformance with the surrounding marketing area.

Philip R. Hager testified at the request of the Board. He provided an April 29, 2014 letter as the Secretary to the Planning & Zoning Commission. At that time he had no opposition to the applicant's request. He stated that a case could be made that the applicant's request was in conflict with the Master Plan. However, he added that the Master Plan did not require three acres for development in the Conservation zone. He stated that the Board was the interpreter of the zoning code but could not rewrite the code. He further stated that the Board could not grant a variance that would break the law. He explained that the theme of the Conservation District was three acre lots. The three acre lots would be required unless the property was located in a clustered subdivision. He believed that if the Board granted this request that it would be an uncomfortable precedent. He felt that the uniqueness and unusualness evidence presented by the applicant was weak.

Jay Voight testified at the request of the Board. He explained the reason for his decision in case ZA-1492. He explained that he could not find the practical difficulty or unreasonable hardship in the request of the applicant. He further found that there were other ways for the applicant to protect his interest in Lot 7. He explained that there have been no variances for lot sizes while he has been the zoning administrator. He noted that when Lot 7 was approved it was approved to be a lot with three acres. He reasoned that the applicant already had control of what he was asking the Board to approve. There are also many houses in the Conservation district that are fifty feet from the setback line. He also noted that there would be two principal residences on the same lot if Lot 7 was consolidated with the main farm.

Tonia Almond testified in opposition to the applicant's request. She has lived in her home since 1997. She only owns one home. Her attraction to the community was that the home owners had at least three acres of property. She noted that others in the community have been denied the opportunity to break up their lots. She believed that there was a grand scheme here behind this request that was unknown at this time.

Linda Brady testified in opposition to the applicant's request. She stated that the developer of Huntfield was told he could only put three acre lots in the development. He wanted to put in smaller lots in order to make more money but was not allowed to do so. She stated that she and her husband developed five acre lots. They bought Bear Branch Estates in 1970 and developed the property in 1972. In 1978 Huntfield was developed.

Phyllis Adam testified in opposition to the applicant's request. She stated that she was a licensed realtor. She stated that Mr. Zimmerman still had an easement on the property he wants to buffer. She prepared a market analysis for Mrs. Haan's daughter, the prior owner of Lot 7 before the applicant bought it. She believed that if this request was granted for Mr. Zimmerman that everyone would want to decrease their lot size. There are no building rights on the piece of the Lot 7 being added to the farm. In Protestant Exhibit 2, Mrs. Adam provided further comments. She stated that she is a proponent of protecting property rights. She learned about the easement in the deed (Exhibit 10) approximately one year ago. "The limitations of use outlined in that easement would have certainly affected the marketability and value of this property." She also noted the time and money the applicant had used in the instant request to the Board. She believed that there had to be "more to the story." She believed that the granting of the request would set a bad precedent. If the applicant was allowed to reduce the acreage in the

Conservation zone, then other owners would like to “take off an acre or two on each side and sell it and make some money too.” She speculated that “before you know it, we will have houses popping up everywhere and there goes our conservation zoning and the benefits and privileges that goes along with it that we enjoy.”

Pete DiAngelo testified in opposition to the applicant’s request. He stated that the applicant had no regard for the law. He also noted that the cars on his property were licensed vehicles.

Lynn Thorn testified in opposition to the applicant’s request. She stated that her house was fifty feet from the property line. She also believed that Lot 7 and Lot 2 looked like a good place to construct a road. She did not want a road on Lot 7 and Lot 2 and did not want the neighborhood to change due to the addition of such a road.

John N. Adam testified in opposition to the applicant’s request. He has lived in his house since 1978. At that time his house was at the dead end of Chanter Drive. He stated that some one acre lots are part of the Huntfield subdivision. He believed that all this money being spent for a privacy buffer seemed suspicious. He thought the granting of this application was the beginning of a bigger picture.

Bonnie Lankford testified in opposition to the applicant’s request. She stated that she lived across from Custom Woodworks. She may have seen delivery trucks once a month. The facility has not generated noise. She has only seen the home owner’s work truck on the property. She stated that she looked for years to find her property. The three acre minimum was a key selling point for her.

Carl Burdette submitted Protestant Exhibit 1 in the case. He was in opposition to the applicant’s request. He mentioned the precedent that would be set if the Board allowed the applicant to reduce Lot 7 from three acres to 2 acres. He noted that the applicant’s property is presently already protected, because he already owns all the land in question. Nothing is going on in the neighborhood that is putting the applicant’s home in danger. He also added that the applicant was willing to spend a lot of time, effort and money to “protect” his home today, but tomorrow he may not care.

The Board found that the practical difficulty and unreasonable hardship to the applicant had a number of grounds. The applicant wanted to obtain a way to protect his property from an encroachment on Lot 7 for now and into the future. The easement in the deed may not have granted that protection since no amended plat was recorded. The applicant would have needed to get approval from other governmental entities in the county to go this route. The other justification for granting the request was that it was reasonable to square off his property with regard to the lot line in the rear of his house. Mr. Stroud testified that it was unique and unusual for Lot 7 to have its septic system and well in the front yard.

The Board also found that the requirement of 3 acres minimum in the Conservation District causes a practical difficulty to Mr. Zimmerman as the lot lines for Lot 7 were set fifty feet from the existing farm house. The Board accepted Mr. Zimmerman’s testimony concerning

the existing conditions around the rest of his nine acre farm in regards to neighbors placing various items along his property including untagged vehicles, sheds, building supplies, and other items that he considered unsightly. The Board is convinced that if Lot 7 were ever sold, that Mr. Zimmerman would be at risk for having these same conditions just outside his back door. The Board also heard testimony about the possible use of an easement to resolve Mr. Zimmerman's practical difficulty. The Board ultimately determined that the easement would be problematic. Because the conditions that caused this practical difficulty are not the result of the actions of the applicant, and that the purpose of the Conservation Zone to protect open spaces is still being accomplished by increasing the farm size from nine to ten acres, the Board believes that granting this variance is the best way to resolve Mr. Zimmerman's practical difficulty.

The Board found that granting the request would not have an impact on the health, safety, or welfare of the community. Granting the applicant's request would cause no measurable effect to the neighborhood. The Board found that a reduction in property values would not occur if the request was granted. The Board noted that there were already several parcels in the community of less than three acres. The Board found that the Zoning Administrator made the correct decision in case ZA-1492. The Board members wanted to bring reason to the law. The Board found the suspicions that the neighbors in opposition had were unfounded and speculative as to what would happen with the property in the future. The Board further found that granting the application was not contrary to the public interest and the granting of the request would accomplish the purpose and intent of the zoning regulations for the Conservation District.

The Board was convinced that granting the applicant's request with regard to a reduction of a lot size from 3.0392 acres to 2.0832 acres was consistent with the purpose of the zoning ordinance, appropriate in light of the factors to be considered regarding a reduction in lot sizes in the zoning ordinance, and would not unduly affect the residents of adjacent properties, the values of those properties, or public interests. 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.