

Case 3072

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Leith Wenzing-Clinton
725 Frizzelburg Road
Westminster, Maryland 21157

ATTORNEY: John T. Maguire, Esq.
Beck, Hollman, Hughes & Finch, Chartered
189 East Main Street
Westminster, Maryland 21157

REQUEST: Variances reducing the minimum required lot area of three acres, and lot width of three hundred feet if determined appropriate, to allow division of the existing four acre lots into two lots.

LOCATION: West of Winchester Court with access by right of way extending from Winchester Court in Winchester Park subdivision in Election District 7.

BASES: Article 5, Section 5.5; Article 15, Section 15.5; Ordinance 1E.

HEARING HELD: January 24, 1989

On January 24, 1989 the Board of Zoning Appeals heard testimony and received evidence regarding the Application for Hearing for variances to the minimum required lot area and width, if appropriate, to allow division of one lot into two lots. Although not expressed, the purpose of each of the lots is for construction of a single family dwelling. Based on the record of this case, the Board will deny the variances. The application, testimony and evidence comprising the record of this case are hereby incorporated by reference in this decision. The pertinent findings include the following facts:

FINDINGS OF FACTS

The existing 4.004 acre lot was divided from adjoining acreage by deed dated August 27, 1979 and was subsequently transferred in 1984 to the applicant, Mrs. Wenzing-Clinton. Applicant's Exhibit 6. The lot is located on a hillside and is heavily wooded. When the lot was created in 1979, the property was zoned "T" Transitional District. Applicant's Exhibit 5. The zoning had been established with the adoption of comprehensive Rezoning Ordinance Number MA (Map Amendment)-79 by the County Commissioners of Carroll County on April 26, 1978. On January 25, 1984 an Application for Creation of Lot(s) or Parcel(s) Not Subject to the Carroll County Subdivision Regulations for two lots, filed in behalf of Mrs. Wenzing-Clinton, was approved. Applicant's Exhibit 5. Mrs. Wenzing-Clinton indicated to the Board that at that time she thought the approval was all that was required for her to have two lots, and that she was unaware of the necessity to record deeds describing and creating the proposed lots in the Carroll County Land Records. On March 7, 1985, more than a year later, the lot and adjoining land to the north, west, and south was rezoned to "C" Conservation District upon adoption of comprehensive Rezoning Ordinance Number MA (Map Amendment)-138-85 by the County Commissioners of Carroll County. The prior zoning of the land to the east, including Winchester Park subdivision, "R-20,000" Residence District, was retained. See zoning map 45B. The Comprehensive Plan for Westminster and Envisions, a joint City of Westminster and Carroll County land use plan designating the land use of the property to be Conservation, was also adopted by the County Commissioners on March 7, 1985. Mrs. Wenzing-Clinton testified that in 1987 she learned that the approval of the application did not create the proposed lots.

The northerly portion of the existing 4.004 acre lot, 2.225 acres comprising one of the two proposed lots, abuts the westerly, or rear, property lines of Amended Lots 30A and 31A of Winchester

Park subdivision, Section B, Resubdivision of Lots 30A and 32A. The southerly portion of the lot, 1.7792 acres comprising the second proposed lot, extends to the south of the subdivision. Applicant's Exhibits 3 and 4. Although the proposed lots would exceed the minimum requirements of the "R-20,000" Residence District, as Winchester Park subdivision is zoned, the lots would not conform with the minimum required lot area of three acres for single family dwellings in the "C" Conservation District. A single right of way providing access between the proposed lots and Winchester Court, which serves other lots in the subdivision, has been established by subdivision plat and an agreement recorded in the Carroll County Plat and Land Records. Applicant's Exhibits 1,3, and 7. The right of way would provide for a use in common driveway for the proposed lots and for Amended Lot 31A. Thus, only one driveway connection to Winchester Court would be required.

An expert in land surveying testified on behalf of the request and indicated that the lot was suitable for division into two lots with a secluded homesite on each lot. A consultant and expert in real estate appraisal presented evidence and testimony on behalf of the request, concluding that the proposed division of the lot into two lots for construction of a dwelling on each lot would be appropriate, and would not adversely affect the adjacent properties, including those in Winchester Park subdivision. A comprehensive planner with the county testified regarding the Applications for Creation of Lot(s) or Parcel(s) Not Subject to the Carroll County Subdivision Regulations, the joint City-County comprehensive land use plan, and comprehensive Rezoning Ordinance MA-138-85 which rezoned the lot to "C" Conservation District.

APPLICABLE LAW

Provisions of the Carroll County Zoning Ordinance--Ordinance 1E--pertaining to the request include:

Article 5, Sections 5.1(e) and 5.5 which specify that single family dwellings are principal permitted uses in the "C" Conservation District, provided the lot has a minimum area of three acres and a minimum width of three hundred feet. (Sections 4.10 and 4.15 do not apply in this case).

Article 20, Section 20.39 defines a variance as:

"...a relaxation of the terms of the Zoning Ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the results of the actions of the applicant, a literal enforcement of the Ordinance would result in unnecessary and undue hardship."

Article 15, Sections 15.0 and 15.5. Section 15.0 states:

"The regulations specified in this ordinance shall be subject to the following exceptions, modifications, and interpretations:"

Section 15.5 reads in part:

"...The Board may grant such variance only in cases where the strict compliance with the terms of this ordinance would result in practical difficulty and unreasonable hardship, and only if in strict harmony with the spirit and intent of such regulations and only in a manner so as to grant relief without substantial injury to public health, safety and general welfare."

REASONING

Following creation of the lot in 1979 in Liber 749, folio 323 of the Carroll County Land Records until adoption of comprehensive Rezoning Ordinance 135-85 on March 5, 1985, the lot could have been divided by deed into two lots not subject to the Carroll County Subdivision Regulations. Approval of the Application for Creation of Lot(s) or Parcel(s) Not Subject to the Carroll County

Subdivision Regulations on January 25, 1984 confirmed that the Planning Office did not object to recordation of the proposed lots for construction of dwellings. However, division of the lot was not pursued during the time that the proposed lots would have conformed with the minimum requirements of the "T" Transitional District. Mrs. Wenzing-Clinton's misunderstanding concerning the approval of the application and the mistaken belief that the approval somehow confirmed or created the proposed lots is unfortunate. However, the misunderstanding provides no basis to authorize the requested variances.

The testimony presented describing the characteristics of the lot confirms that the "C" Conservation District is appropriate, and that the lot is suitable for construction of a single family dwelling. Accordingly, there is no evidence of practical difficulty and unreasonable hardship in the use of the lot that would warrant authorization of the requested variances.

CONCLUSION

The requested variances are without merit and are hereby denied.

Feb. 23, 1989

Date

John Totura
John Totura, Chairman