

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY MARYLAND

APPLICANT: Frall Developers, Incorporated
Post Office Box 659
Mount Airy, Maryland 21771

REQUESTS: Variances reducing the minimum required lot area of 3 acres to 1.564 acres, and the minimum required front yard of 50 feet to 40 feet for a proposed lot.

LOCATION: North side of Frontage Road (Md. Rt. 144) about 1,000 feet east of Bennett Branch Road in Election District 13; Hickory Hills Remainder of Homes subdivision, Section II, Parcel B recorded in Carroll County Plat Records in Book 4, page 84.

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

HEARING HELD: November 25, 1988; CONTINUATION DATE: January 7, 1988

FINDINGS

The record of this case is hereby included by reference in this decision. The pertinent findings include the following facts:

Parcel B, the property, was created with the recordation of Hickory Hill Home subdivision plat, dated December 3, 1959, in the Carroll County Plat Records in Plat Book 4, page 84, December 15, 1959. With adoption of Zoning Ordinance 1E August 17, 1965, Parcel B was zoned "R-10,000" Residence District as shown on Official Zoning Map 37. Purchase of right-of-way by the State of Maryland for construction of I (Interstate) 70-N and Frontage Road (Md. Rt. 144) reduced the area of Parcel B to 2.1948 acres more or less, as described in deed recorded in Liber C.C.C. 991, folio 529 (Protestants' Exhibit 2). Construction of I 70-N and Frontage Road resulted in Parcel B fronting on the south side of I 70-N and the north side of Frontage Road, although vehicular access to I 70-N would not be permitted.

Adoption of Comprehensive Rezoning Ordinance MA (Map Amendment)-112-82 on April 27, 1982 rezoned Parcel B, to "C" Conservation District (Private) and the lots in Hickory Hill Homes subdivision located south of Frontage Road, including Section Two, to "R-20,000" Residence District as shown on zoning map 75B, which superseded map 37. Due to acquisition of land for right-of-way for Frontage Road from lots created by Hickory Hill Homes subdivision, a revised plat identified as Reassembly Plat of Section Two, Hickory Hill Homes (lots 11 through 21) was recorded on October 3, 1985 in Plat Book 27, page 47 (Protestants' Exhibit 3). The minimum required lot area and lot width--measured at the midpoints of the side lot lines--for the "R-20,000" Residence District were, and continue to be, 20,000 square feet (0.45914 of an acre) and 100 feet. The lot areas of the reassembled lots comprising Section Two range from 0.674 of an acre (29,359.44 square feet) for lot 16 to 2.985 for lot 12. As neither public water nor sanitary sewerage facilities are available to the subdivision, private wells and on-site sewerage disposal systems are required, subject to Health Department regulations. Parcel B was not included on the Reassembly Plat of Section Two of Hickory Hill Homes, apparently for reason that the parcel is zoned "C" Conservation District, which requires a minimum lot area of three acres for a dwelling.

Since development and occupancy of dwellings in Hickory Hill Homes subdivision, certain wells supplying water to the respective dwellings have either not produced water continuously, or have failed and are now dry. It is understood that the water supply is warranted for a period of one year. The applicant, Frall Developers, Inc., in an effort to resolve the problem has drilled a number of wells on Parcel B with varying degrees of success, and agreed to extend water supply lines under Frontage Road to supply such dwellings.

In order to partially recover expenses incurred in attempting to resolve the problem, Frall Developers, Inc. proposed to construct a single family dwelling on Parcel B, and filed (building) Permit Application and Zoning Certificate 87-2450. In response to the application, the Bureau of Environmental Health of the Carroll County Health Department stated, in part, in its letter of August 24, 1987 (Protestants' Exhibit 1):

The permit cannot be processed at this time for the following reasons:

2. The property includes wells which serve properties in the Hickory Hills subdivision. Separate deeds must exist for the property to be built upon and the property containing those wells.

As part of the solution to the above requirement, Frall Developers, Inc. proposes to divide Parcel B into Lot 1 and Parcel "A" as shown on Applicant's Exhibit 1. Parcel "A" would be a separate parcel, solely for the wells serving properties in the subdivision. A single family dwelling would be constructed on Lot 1, which would have an area of 1.564 acres and a lot width of 500 feet. In providing a right-of-way width of 70 feet for Frontage Road (35 feet measured perpendicularly from the center line), the separate parcel for the wells, and complying with the minimum required front and rear yards of 50 feet each, the depth of the buildable area for the dwelling would be reduced to about 23 feet. Accordingly, in order to construct a dwelling of reasonable dimensions, the variance for reduction of the minimum required front yard from 50 feet to 40 feet was requested. The minimum of 40 feet is the same as required for the subdivision by the "R-20,000" Residence District regulations as stated in Article 7, Section 7.5 of Zoning Ordinance 1E. The variance would allow a dwelling approaching 33 feet, measured front to rear, which would be in character with the dwellings in the subdivision.

Residents of several adjacent properties in the subdivision opposed the requested variances citing concerns regarding:

- adverse affects to the quality of the underground water from the on-site sewerage disposal system of the proposed dwelling
- potential damage to the existing wells on Parcel B and water lines resulting from heavy equipment that would be used in constructing the proposed dwelling
- reduction of the available underground water supply to the existing dwellings in the subdivision
- depreciation of existing property values caused by one or more of the above events

No probative evidence was presented in substantiation of the protestants' concerns.

Provisions of Zoning Ordinance 1E that are applicable in this case include the following:

Article 4, General Provisions; Section 4.8, Buildable Lots.

Any lot which was a buildable lot under the terms or regulations in effect at the time of the adoption of this ordinance and which was established or recorded at that time shall be deemed a buildable lot for the erection only of a single-family dwelling, subject to the provisions of Section 15.1.

Article 15, Exceptions and Modifications; Section 15.0, Generally.

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

Section 15.1. Lot Area Modification.

(b) In any district where a single-family dwelling is permitted, a dwelling may be erected on any lot or parcel of record, despite the fact that the lot or parcel does not meet the minimum area requirements of this ordinance, provided: (Amended 4-26-78).

1. The lot or parcel (including any yard requirements) was lawfully fully created in compliance with all zoning and subdivision regulations applicable at the time the lot or parcel was created.
3. All other regulations, including the standards of the State and County Health Departments, are complied with. The Zoning Administrator may deny a permit for the erection of a dwelling on a lot which is substandard in area or yard if because of extraordinary conditions, construction of a dwelling on the lot would present a danger to health or safety.

Section 15.5, Variance. (Amended through 2-25-76)

The Board may authorize, upon appeal, in accordance with Section 17.2, variances from height, lot area, lot width, yard regulations, parking space requirements, sign regulations, and distance requirements specified in Section 4.12 and 14.31(c)4. 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.

Article 5, "C" Conservation District;
Section 5.1, Principal Permitted Uses:

(e) Dwellings (detached), single family; provided that the minimum lot size shall be maintained at three (3) acres....

(The minimum required lot area of three acres, lot width of 300 feet, and front side, and rear yards of 50 feet are specified in Section 5.5)

In addition, the term "variance" is defined in Article 20, Section 20.39 of Zoning Ordinance 1E 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.

CONCLUSION

In accordance with the provisions of Article 4, Section 4.8; Article 15, Section 15.1(b); and, Article 5, Section 5.1(e), the lot as presently existing qualifies for issuance of a zoning certificate for the principal permitted use of a single-family dwelling. Resubdivision of the lot to establish Parcel A in compliance with the Carroll County Health Department requirement reduces the existing lot area and depth. Authorization of the variance, reducing the minimum required lot area, will provide administrative relief to the requirements of the zoning ordinance that would prohibit use of the lot for a dwelling. Reduction of the minimum required front yard, as requested, will allow construction of a dwelling comparable in dimensions to the dwellings in the subdivision.

With regard to the provisions of Article 17, Section 17.6 of the zoning ordinance which the Board must consider, the proposed use of the lot for the single-family dwelling is a principal permitted use, legislatively determined to be an appropriate use of the land.

Individual water supply wells or sewerage systems, which are the real concerns of the opposition to Frall's requests, are not included or controlled as land uses within Zoning Ordinance 1E. Authorization of individual water supply wells and individual sewerage systems to serve the proposed dwelling, as was the case with

all other dwellings in the the subdivision, rests with the Carroll County Health Department. Frall has established ample evidence of practical difficulty and unreasonable hardship in use of the proposed lot to justify authorization of the requested variances. Accordingly, the requested variances are hereby authorized.

Feb. 11, 1988

Date

John Totura

John Totura, Chairman