

Case 3216

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Carleton F. Burrows, Jr.
6333 Davis Road
Mount Airy, Maryland 21771

REQUESTS: Variances reducing the minimum required lot area for 3 acres to 1 acre, and lot width of 300 feet to about 250 feet for two proposed lots to be divided from the premises.

LOCATION: 6333 Davis Road in Election District 13

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

HEARING HELD: July 26, 1989

On July 26, 1989, the Board of Zoning Appeals heard testimony and received evidence concerning the variances noted above. The application, testimony and evidence comprising the record of this case are hereby included by reference in this decision. The pertinent findings include the following facts:

FINDINGS OF FACT

The existing five acre lot, which is improved with a single family home, is located on the west side of Davis Road about 900 feet south of Gillis Falls Road intersection. The lot and surrounding properties are zoned "C" Conservation District as shown of zoning map 71A.

The applicant, who purchased the property about 1961, proposes to divide two lots, having areas of approximately one acre each, from the rear of the property. As shown on the plot plan submitted with the application, the lots extend across the full width of the lot, with one lot located in front of the other. Vehicular access to the lots is proposed by right of way abutting and paralleling the northerly side property line. Ownership of the right of way would be retained with the original lot. Thus, the lot width of 250 feet of the existing lot, which does not conform to the minimum requirement of 300 feet would not be reduced.

The applicant indicated that the requested variances should be authorized for reasons including:

- the growth and development occurring in the county

- existing residential lots in the area that do not conform with the minimum required lot area and width of the "C" Conservation District
- the proposed lots would not adversely affect ground water in the area, surface drainage to Gillis Falls, or adjacent residential properties

The owners of two adjoining lots testified in opposition to the requested variances. Their relevant concerns included: reliance upon the provisions of the zoning ordinance to control residential development in the area; protection of property values; and, the evident lack of justification to authorize the requested variances.

A comprehensive planner with the Carroll County Department of Planning, Mr. Greg Horner, testified that the property is located in the watershed of a reservoir planned to be constructed on Gillis Falls; the area had been rezoned in 1978 from "A" Agricultural District to "C" Conservation District in a comprehensive rezoning by the County Commissioners of Carroll County; and, that authorization of the variances to allow the two additional lots would be contrary to the Master Plan of Carroll County for development of the area.

APPLICABLE LAW

Article 5, "C" Conservation District; Section 5.5, Lot area, lot width and yard requirements of Ordinance 1E specifies that the minimum required lot area and lot width for a dwelling are 3 acres and 300 feet respectively.

Article 20, Definitions, Section 20.39 defines variance as:

"...a relaxation of the terms of Zoning Ordinance where such variance will not be contrary to 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, Exceptions and Modifications, Sections 15.0, Generally, and 15.5, Variance, read respectively and relevantly:

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

"The Board may authorize upon appeal, in accordance Section 17.2, variances from...lot area, lot width, 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."

In accordance with the provisions of Article 17, Section 17.4.9, of Ordinance 1E, the Board extended the time to issue this decision.

REASONING

The existing residential use of the five acre lot conforms with the provisions of the zoning ordinance and the Carroll County Master Plan. The reasons presented by the applicant in support of the requested variances fail to substantiate any unusual conditions that are unique to the property and which unduly restrict the use of the property in compliance with the provisions of the Carroll County Zoning Ordinance. Without substantiation of practical difficulty and unreasonable hardship in use of the property, the Board of Zoning Appeals can not authorize the requested variances.

CONCLUSION

It is evident that the requested variances are without merit, and are solely a matter of convenience to the applicant. Thus, there is no option but to deny authorization of the variances. Accordingly, the Board hereby orders that the variances reducing the minimum required lot area for 3 acres to 1 acre, and lot width of 300 feet to about 250 feet for two proposed lots are denied.

Sept. 12, 1989
Date

John Totura
John Totura, Chairman