

BOARD OF APPEALS CASE NO. 4996

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BEFORE THE

APPLICANT: Roston Homes, Inc.

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ZONING HEARING EXAMINER

REQUEST: Variance to permit two lots on a panhandle in the R2 District; 201 West Ring Factory Road, Bel Air

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 11/24/99 & 12/1/99

HEARING DATE: February 9, 2000

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Record: 11/26/99 & 12/3/99

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Roston Homes, Inc., is requesting a variance to Section 267-22(G) of the Harford County Code to permit two (2) panhandle lots, instead of the one panhandle lot allowed, in a R2 Urban Residential District. The Applicant is the contract purchaser of the property, currently owned and occupied by Margaret Supik.

The subject property is located at 201 West Ring Factory Road, Bel Air, 200 feet east of the new Route 24, in the Third Election District. The parcel is more specifically identified as Parcel No. 181, in Grid 4C, on Tax Map 49. The parcel contains 2.526 acres, more or less, all of which is zoned R2.

Ms. Vickie Rossellini, President of Roston Homes, Inc., testified on behalf of the Applicant. She identified the Agreement of Sale between the Applicant and the current owner, Ms. Supik, and indicated that the Applicant would like subdivide the property into five (5) lots, while retaining the existing home and driveway currently located on the property. She further testified that if the variance were granted, the Applicant would comply with the three conditions requested by the Department of Planning and Zoning in its Staff Report dated January 19, 2000.

Ms. Margaret Supik, 201 West Ring Factory Road, Bel Air, appeared and testified that she is the current owner and resident on the subject property. She has owned the property for approximately 30 years. Ms. Supik stated that she has seen many changes in the neighborhood over the past 30 years, including the construction of houses in the West Riding subdivision to the rear of her property, as well as the widening of West Ring Factory Road in front of the property.

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She testified that the lots in the West Riding subdivision and another subdivision in her area are smaller than her lot. She also indicated that when a portion of her property was taken by the State for road improvements in 1987, she was compensated for that loss. Ms. Supik testified that the contract which she has with the Applicant is contingent upon the property being divided into five (5) lots. Ms. Supik also noted that the sewage pumping station, which is shown on the site plan adjacent to proposed lot number 5, is not located on her property, but was transferred by the previous owner of the property to the county.

Mr. Rowan Glidden, Senior Associate with George W. Stephens, Jr. & Associates, Inc., and director of land planning and landscape architecture in the company's Bel Air office, was accepted and testified as an expert in landscape architecture, zoning, planning and site development. Mr. Glidden was involved in preparation of the Applicant's site plan. He testified that while the property was zoned for and could support up to 8 units, the proposal involves the creation of 5 lots, including a lot which contains the existing home and blacktopped driveway. The proposed site plan was designed to utilize the existing driveway as a common drive for three of the lots, with one other separate driveway proposed as a common drive for the remaining two lots. The use of the common driveways, according to Mr. Glidden, helps minimize traffic conflicts from access to West Ring Factory Road. The proposed lots would range in size from three-tenths (3/10) of an acre to two-thirds (2/3) of an acre. Mr. Glidden testified that, while the property could be divided into five lots without a variance (by moving the lot lines several feet), this would create practical difficulty for the Applicant in that: the existing driveway would have to be moved and would not be able to be used as a common driveway for more than two of the proposed lots; it would create confusion about the boundary lines for at least two of the lots; and it would result in a much less attractive appearance for the property as a whole. The site plan, as designed, would minimize the number of access points to West Ring Factory Road. It is Mr. Glidden's opinion that this property has unique characteristics because of its variable topography, the existence of the State Highway Administration's right of way, the location of the sewage pumping station next door and the location of the existing home, driveway and mature trees on the lot.

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With the exception of the requested variance to create a second panhandle lot, Mr. Glidden testified that the proposed site plan meets all the other setback and subdivision requirements of the Harford County Code and has been designed in accord with standard engineering practices.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, testified that the Department recommends approval of the requested variance, subject to several conditions primarily related to the use of common driveways on the property. Mr. McClune testified that it is the Department's position that the property contains unique features based upon improvements to the property and the location of the sewage pumping station. It is Mr. McClune's testimony that approval of the variance will allow for greater flexibility in locating the houses upon the proposed lots, reduce the number of access points to West Ring Factory Road, and will result in the best design for the site.

Several residents of neighboring and/or adjacent properties testified in opposition to the requested variance. The issues raised by these witnesses primarily related to concerns about the construction of additional homes in general, rather than the specific variance requested by the Applicant. Several witnesses were opposed to the request based upon concerns about potential reduction in property values, the removal of trees from the site, problems with storm water runoff and effects on a stream which runs across the back of the subject property. One witness, Mr. Tony Ciampaglio, 208 Regent Drive, Bel Air, testified that the view from his yard looked through other yards directly onto the subject property. While his primary concern was the removal of trees which serve as a sound buffer from traffic and the reduction of property values, he also testified that he did not believe that the subject property was unique in any way. It was his opinion that the only thing that was unique about the lot was the desire of the Applicant to "squeeze" five houses on property that should have fewer homes. His primary objection was to the location of the house on Lot 3. He felt that if that house was moved more forward on the lot, it would lessen the impact on surrounding properties.

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CONCLUSION:

The Applicant is requesting a variance from Section 267-22(G)(1) of the Harford County Code, which provides:

Panhandle-lot requirements. Panhandle lots shall be permitted for agricultural and residential uses, to achieve better use of irregularly shaped parcels, to avoid development in areas with environmentally sensitive features or to minimize access to collector or arterial roads, subject to the following requirements:

- (1) Except in Agricultural and Rural Residential Districts, with regard to any parcel, as it existed on September 1, 1982, not more than one (1) lot or five percent (5%) of the lots intended for detached dwellings, whichever is greater, and not more than ten percent (10%) of the lots intended for attached dwellings may be panhandle lots.**

As stated above, the apparent purpose of permitting the creation of panhandle lots is to allow for better design and use of a parcel than would be possible utilizing only traditionally-shaped and accessible subdivision lots.

Section 267-11(A) of the Zoning Code further provides for the granting of a variance from the panhandle requirements if it is found that:

- ...(1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.**
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.**

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Accordingly, the determination of whether a requested variance is warranted under the Code involves a two step process:

1. The first step requires a finding that the subject property is, in and of itself, unique and unusual in a manner different from the surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. Unless there is a finding that the property is unique, unusual or different, the process stops here and the variance is denied without any consideration of practical difficulty and/or unreasonable hardship.
2. The second step is to determine whether unreasonable hardship or practical difficulty results from the disproportionate impact of the ordinance caused by the property's uniqueness .

See Cromwell v. Ward, 102 Md. App. 691, 651 A.2d 424 (1995).

The first step in the process, determining whether a property is "unique", has been defined by the Maryland courts as follows:

"In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.

North v. St. Mary's County, 99 Md. App. 502, 638 A. 2d 1175 (1994), at 514.

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The testimony of Mr. Glidden, an expert in zoning, planning and site development, and that of Mr. McClune, from the Department of Planning and Zoning, was that this property was unique due to the location of the parcel along two heavily traveled roadways which limited the number of access points to the parcel, the existence of a significant number of mature trees and their placement on the property, the size of the parcel in relation to other parcels in adjoining subdivisions, and the location of an existing house, driveway and sewage pumping station either on or adjacent to the subject parcel.

While these allegedly “unique” features are not extraordinarily compelling, given the definition articulated by the Courts, the Hearing Examiner finds that they are sufficient to support a finding that there are unique circumstances associated with this parcel which would justify going forward to the next step in the inquiry, namely, whether literal enforcement of the relevant Code section would result in practical difficulty for the Applicant.

Harford County Code Section 267-11(A) states that the test for determining whether a variance should be granted, once “uniqueness” is determined, is whether literal enforcement of the Code would result in “practical difficulty or unreasonable hardship” (emphasis added) and whether granting the variance would be “substantially detrimental to adjacent properties” or “materially impair” the purpose of the Code or the public interest.

In Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28, 322 A.2d 220 (1974), the Maryland Court of Special Appeals has helped to clarify which standard is to be applied during the second step in the variance analysis between the difficult burden of proving undue or “unreasonable hardship” and the lesser burden of proving “practical difficulty.” The Court addressed the distinction between a “use” variance, which changes the character of a zoning district (by permitting a use other than that normally permitted in the particular zoning district, such as a variance for a commercial use in a residential zone), and an “area” variance, which does not change the character of the zone but merely allows a variance from area, height, density, setback or other similar restrictions. According to Anderson, the standard to apply to a “use” variance is the more difficult “unreasonable or undue hardship”, while the standard applicable to an “area” variance is the less burdensome test of “practical difficulty.”

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The requested variance does not involve a change in the proposed use of the property. The Applicant is seeking to create residential lots in a residential district. The requested variance is rather an "area" variance which seeks to change the configuration of the lots which would normally be allowed in the residential zone. Therefore, the Applicant must prove that literal enforcement of the Code section in question would result in "practical difficulty" in accord with the following criteria:

1. Whether strict compliance with the requirements would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
2. Whether a grant of the variance applied for would do substantial justice to the Applicant as well as other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."
(Citations omitted)

22 Md. App. at 39.

Based upon the evidence presented at the hearing, it is clear that literal enforcement of the Code section allowing only one panhandle lot on the subject property would create an unnecessary burden or practical difficulty for the Applicant. The subject property is zoned R2, which would allow the construction of up to 8 units on this parcel. Witnesses for the Applicant testified that the five proposed lots could be created without the necessity of the variance, but would result in the potential removal of more trees, the relocation of a common existing driveway, and a less attractive site design as a whole. It would also create confusion as to lot boundary lines for residents on at least one of the lots. There was no evidence that granting the variance would do substantial injustice to the Applicant or any other property owners, nor does there appear to be more modest relief which could accomplish the same purpose.

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In fact, given the stated purpose of the "panhandle lot" section of the Code, it would appear that the requested relief is in complete accord with such purpose; namely it will achieve better use and design of the property, help retain mature trees and foliage on the site, and minimize access points to heavily traveled roadways.

While concerns of the neighbors with regard to removal of trees, potential runoff, and impact on the existing stream bed are understandable, the evidence would tend to show that approval of the variance would actually address those concerns in a more effective way than a site design for five lots without the proposed second panhandle. If the property is to be subdivided at all, which Applicant is clearly within its right to do even without the variance, it would appear that the proposed site plan and the requested variance will provide the most preferable design to meet the purpose of the Code and the public interest as well.

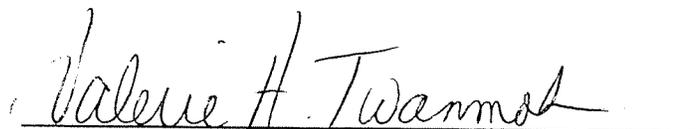
Therefore, it is the finding of the Hearing Examiner that the approval of the requested variance to allow a second panhandle lot will not be substantially detrimental to adjacent properties, nor will it impair the purpose of the Code or the public interest.

It is the recommendation of the Hearing Examiner that the variance to Section 267-22(G)(1) to allow a second panhandle lot in an R2 District be approved, subject to the following conditions:

1. The Applicant shall submit a preliminary plan in accordance with the subdivision regulations, to be reviewed and approved by the Department.
2. Common drives shall be used so that no more than two(2) access points are located along West Ring Factory Road.
3. Common drive agreements shall be submitted for review and approval, and shall be recorded along with the final plat.
4. Applicant shall make every effort to preserve and retain mature trees and shrubbery that already exist on the subject property.

Date

March 27, 2000



Valerie H. Twanmoh
Zoning Hearing Examiner