

BOARD OF APPEALS CASE NO. 5117	*	BEFORE THE
APPLICANT: Cliflyn S. Sadler	*	ZONING HEARING EXAMINER
REQUEST: Variance to subdivide 2 lots without road frontage and create a fifth panhandle lot; 1891 Eden Mill Road, Pylesville	*	OF HARFORD COUNTY
	*	Hearing Advertised
		Aegis: 2/7/01 & 2/14/01
HEARING DATE: March 19, 2001	*	Record: 2/9/01 & 2/16/01
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ZONING HEARING EXAMINER'S DECISION

The Applicant, Cliflyn S. Sadler, is seeking a variance pursuant to Section 267-22C of the Harford County Code, to subdivide two lots without the required 25 foot of road frontage for each lot and a modification of Condition No. 5 in Board of Appeals Case No. 3299, to create a fifth lot in an Agricultural District.

The subject property is located at 1891 Eden Mill Road, indicated as the Final Plat of Cliflyn S. Sadler 55-87", and is more particularly identified on Tax Map 9, Grids A & B4, Parcel 234, Lot 3. The parcel consists of 20.282± acres, is presently zoned AG/Agricultural, and is entirely within the Fourth Election District.

Mr. Cliflyn Sadler appeared as the Applicant in this case and indicated that the original tract of land consisted of approximately 100 acres and was divided into four lots for use by members of his immediate family. It is Lot No. 3 that was created during the original subdivision of this property, which is the subject of this request, and the request is that Lot No. 3 be further subdivided into two lots so that a 4 acre lot could be created for the Applicant's nephew to construct his home and live there. The Applicant indicated that a 16-foot right-of-way will allow access to the property from Eden Mill Road, and that the property on either side of the right-of-way is presently a farm owned by Mr. William Wright. This farm has been placed in the State Agricultural Preservation Program according to the witness.

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The subdivision of the entire tract into four lots occurred as a result of Board of Appeals Case No. 3299, which was determined by Mr. Lee Hinderhofer on April 10, 1986. As part of the condition of approval of the four lots, Mr. Hinderhofer found that the subject parcel was unique because of shape and topography and that the parcel was heavily wooded and could not be used for agricultural purpose. There were, in fact, several conditions imposed by the Hearing Examiner in Case No. 3299, one of which is subject to a request for modification in the instant case. Specifically, Condition No. 5 stated as follows:

“No additional subdivision of the property other than the four (4) requested lots shall be permitted until a 50-foot right-of-way is created from Eden Mill Road.”

The witness stated that at the time he purchased the present tract of land from Mr. Wright, he indicated that he would be interested in purchasing additional land from Mr. Wright for a 50-foot right-of-way. The witness indicated that in 1981, Mr. Wright said that the right-of-way should stay where it is and if, in fact, the Applicant purchased the property, Mr. Wright would allow him to have the additional needed land for the right-of-way.

During the testimony taken in Case No. 3299, the Applicant testified then that Mr. Wright had, in fact, agreed to make the land available for the 50 foot right-of-way. However, subsequent to the conveyance from Wright to the Applicant, Mr. Wright placed the remainder of his property in the Agricultural Preservation Program in Harford County without having transferred the 50 foot right-of-way to the Applicant. In 1984 the Applicant called Mr. Wright and inquired about the impact that the placement of the property in the AG Preservation District might have on this requested right-of-way. Mr. Wright indicated that he did not know and suggested that Harford County be contacted. The Applicant indicated that he checked with the Department of Planning and Zoning about how to divide this right-of-way out of the AG Preservation property and was told how to accomplish that. He spoke to Alma Sproul with the Department of Planning & Zoning and also Carol Deibel.

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He was told that Mr. Wright would set aside land for the 50 foot right-of-way since it was not to be included in the preservation act and that it had to be done before it was sent down to the State. A plat was completed and a right-of-way was add to the plat and signed by Mr. Wright in 1985. He was then told by the Department of Planning and Zoning that he had to get a perc test for each lot. The Applicant indicated he completed the perc test for each lot. The Applicant indicated that he completed the perc tests by completed the perc tests by September, 1985, and filed the completed plats with the Department of Planning and Zoning in November, 1985.

Unfortunately, what ensued was that the 50 foot right-of-way, despite the agreement of the seller, Mr. Wright and the buyer, the Applicant herein, and the Harford County Council that ultimately conveyed the property, the 50 foot right-of-way, which had been set aside by all parties was not transmitted to the State by deed or easement and the exclusion of that property was not indicated in any of the documents.

In any event, the Applicant has been told by every party that he has contacted from the State to the Harford County Council to the Department of Planning & Zoning that at this point the only way he will get the 5 lots is to apply for a variance from those conditions.

Michael S. Birch, Esquire, appeared next and indicated that he represented Mr. Sadler in his attempt to get the State to add the 50 foot right-of-way after the conveyance of the Wright property into the Agricultural Preservation Program. Exhibit Nos. 11 through 16 were admitted into evidence and showed documentary evidence of the failed efforts of Mr. Birch to get the State to agree, but the State would not budge and would not alter the documents to allow the 50 foot right-of-way to be conveyed to the Applicant. Mr. Birch indicated that this land is in the Deer Creek Valley and is not suitable for farming. it has many hills, forests, wetland areas, rocky areas and is generally unsuitable. He testifies from his own experience as a farmer and indicated that he owns a 100 cow dairy farm which is in operation today, in addition to his duties as a an attorney in Harford County. The subject property, according to the witness, is very remote and very isolated and the requested variance should have no detrimental impact on the Agricultural Preservation Program and that the right-of-way that is being requested herein existed prior to placing the Wright property into the AG Preservation Program.

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Mr. John Andrew Denbow appeared next and indicated that he lives approximately one-quarter of a mile away from the subject property. Mr. Denbow indicated that he supports the application and does not believe that there will be any adverse impact to his or any other adjacent, adjoining or neighboring property.

Mr. Joseph Suess appeared next and indicated that he lives approximately 100 yards away from the subject driveway and, further, that he supported the Applicant's request and did not believe that there would be any adverse impact to his property to any adjacent, adjoining or neighboring properties.

Mr. Douglas Dufour, Jr. appeared next. He indicated that he lives at 1902 Eden Mill Road, directly across the road at the old sawmill location and that he supports the application herein. The witness did not believe there would be any adverse impact as a result of an additional lot because of the remoteness of the property and the overall location of this land within the County.

James F. Jacobs appeared and indicated that he lives at 1800 Eden Mill Road, voiced his support for the application, and stated that the property is not suitable for farming and that there would be no adverse impact from the creation of a 5 acre residential lot on this property to any neighboring, adjoining or adjacent properties.

Mr. Milton Davenport, from the Department of Planning and Zoning, appeared and testified that the Department recommends that this application be disapproved. Mr. Davenport indicated that it was presumptuous to overturn the conditions imposed by the Hearing Examiner in earlier Case No. 3299. The witness stated that the Applicant at that time requested the creation of four lots and indicated that he had been given a 50 foot right-of-way. On cross examination, Mr. Davenport did indicate that there would likely be no adverse impact as a result of this particular application if it were approved and that the creation of lots would not materially impact the Code.

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In the Staff Report prepared by the Department of Planning and Zoning, the Department stated that the Hearing Examiner granted in Case No. 3299 the Applicant's request to create four subdivision lots that were recorded in 1986 on Plat 55-87 and, further that the Department did not feel the Applicant provided sufficient justification to warrant modification of Condition No. 5 in Case No. 3299 allowing for the creation of an additional lot.

There were no protestants who appeared in opposition to the subject request.

CONCLUSION:

The Applicant is requesting a variance pursuant to Section 267-22C of the Harford County Code, to subdivide two lots without the required 25 foot of road frontage for each lot and a modification of Condition No. 5 in Board of Appeals Case No. 3299, to create a fifth lot in an Agricultural District.

Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code 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 Code or the public interest."

Important to the conclusion of the Hearing Examiner will be Condition No. 5 of Case No. 3299 rendered on April 10, 1986 by then Hearing Examiner, Lee Hinderhofer. Condition No. 5 states as follows:

"No additional subdivision of the property other than the four (4) requested lots shall be permitted until a 50 foot right-of-way is created from Eden Mill Road."

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The Hearing Examiner notes that the decision rendered by Mr. Hinderhofer in Case No. 3299 examines essentially the same fact pattern that exists in the present case. The only difference being that at that time, the Applicant was seeking to create four lots on the 99 acre parcel without the required 50 foot road frontage, and like the present application, the Applicant at that time was proposing a 16 foot right-of-way. Essentially, the only thing that is different between this case and the earlier Case No. 3299 is that a fifth lot is being requested as opposed to the four lots that were originally requested.

The Hearing Examiner, Mr. Hinderhofer, found in Case No. 3299 as a matter of fact, the following: That Mr. Wright had agreed to make the land available for the 50 foot right-of-way to the Applicant; secondly, that prior to the conveyance from Wright to Sadler of that 50 foot right-of-way, the Wright property was placed in the Agricultural Preservation District; thirdly, that at the time of Case No. 3299, because the land was placed in the Agricultural Preservation District, Mr. Wright cannot and finds it impossible to convey the appropriate right-of-way because of restrictions imposed by the placement; that the subject property was in fact unique because of its unusual shape, its topography, its zoning as agricultural without the ability to be used for farming purposes, and that the Department of Planning and Zoning in Case No. 3299 recommended approval of the Applicant's request. Mr. Hinderhofer concluded that the subject parcel was topographically unique and that the uniqueness of the parcel and the topographic conditions justified the granting of the requested area variance. Therefore, the requested variance was recommended, subject to the conditions imposed by the Hearing Examiner. Condition No. 5 was, in fact, that no further lots shall be permitted until a 50 foot right-of-way was created from Eden Mill Road. The Hearing Examiner points out that Mr. Hinderhofer did not discuss any adverse impacts that might be created by an additional lot and, in fact, the record in Case No. 3299 is silent in regard to a fifth lot.

In the instant case, the Hearing Examiner finds that he is dealing with the same request that the Applicant made in Case No. 3299 with the exception that he now wants to create a fifth lot, where earlier only four lot were requested.

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The case of Anderson v. Board of Appeals, 22 MD App. 28, (1974), established a three-pronged test for proving practical difficulty for an area variance:

- (1) Whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome.
- (2) Whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief.
- (3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

As to the first two prongs of the Anderson test, these were addressed by the Applicant and Mr. Birch, both of whom testified that the property was unique due to its frontage along Deer Creek, the isolated nature, the steep slopes and the irregular shape. The Hearing Examiner agrees with that testimony.

It is important to note that without the entanglement of the adjacent property with the State Agricultural Preservation Program, the Applicant would be able to obtain the 50 foot right-of-way and there would be no request for further variance as Case No. 3299 had already approved the creation of a fifth lot if and when a 50 foot right-of-way were obtained. The question then really boils down to whether there is some adverse impact above and beyond a fourth lot created by this fifth lot that would, in fact, indicate that the Hearing Examiner should find against the Applicant's request and recommend denial of a fifth lot.

Based on all of the testimony presented in this case, as well as Case No. 3299, it appears that the summary provided by the Department of Planning and Zoning in Case No. 3299 continues to apply and states:

“This proposal should have little or no impact on the neighborhood. The overall tract is 99+ acres and is only being subdivided into four (4) lots. Three of the lots are approximately 20+ acres, while a fourth lot is 36 acres. They can more than meet the Code requirements and if they owned the 50 foot right-of-way out to Eden Mill Road, there would be no need for this Board of Appeals case and the lots could have been subdivided as of right. The Department is requiring as a condition of approval that the Applicant enter into an agreement with the Wright's to convey the necessary land if and when their lands are ever removed from the Agricultural Preservation District.”

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It appears to the Hearing Examiner that the Department of Planning and Zoning has taken an adverse position in this particular case simply because a condition was imposed in Case No. 3299 that limited the creation of a fifth lot until the 50 foot right-of-way was created. However, it appears to the Hearing Examiner that had the Applicant requested the fifth lot back at the time of Case No. 3299, there would have been no reason for the Department of Planning and Zoning, or the Hearing Examiner in that case, to have denied approval. None of the uniqueness of this property has changed. None of the hardship imposed by the inability of the Applicant to obtain the 50 foot right-of-way has changed. In fact, the only thing that has changed is that the Wright property has been placed in the Agricultural Preservation District and remains there until this day, making it impossible to convey that 50 foot right-of-way at the present time.

Mr. Birch testified to the efforts he has made on behalf of the Applicant to obtain approval to grant this 50 foot right-of-way conveyance to the Applicant in this case; however, the file is replete with the State's position that it will not, in fact, allow the Applicant to obtain this 50 foot right-of-way without what appears to be extensive litigation with the State of Maryland.

The Hearing Examiner concludes that it would be practically difficult and impose an unreasonable hardship on the Applicant to pursue litigation with the State of Maryland to obtain this 50 foot right of way when, in fact, approval of the requested variance would have no adverse impacts on adjoining, adjacent or neighboring properties, nor would the approval have any material detriment on the purposes of the Code or the public interest. The neighboring property owners, including Mr. Wright, have testified that the grant of the requested variance would have no impact on any of the properties in this neighborhood. The Hearing Examiner notes that this neighborhood consists of very large tracts of agricultural land.

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Therefore, the Hearing Examiner recommends approval of the Applicant's request and recommends that a variance, pursuant to Section 267-22C of the Harford County Code allow the Applicant to subdivide two (2) lots without the required 25 foot of road frontage for each lot and, further, to allow modification of Condition No. 5 in Board of Appeals Case No. 3299 to allow the creation of a fifth lot in an Agricultural District. No other modifications of the conditions set forth in Case No. 3299 are recommended herein.

Date MAY 30, 2001

William F. Casey
Zoning Hearing Examiner