

APPLICANTS:
Joseph & Elizabeth Dlugokenski

REQUEST: A variance to allow two panhandle lots to be created from one parcel in the R1 District

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS

HEARING DATE: November 14, 2007

Case No. 5618

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Joseph S. Dlugokenski

CO-APPLICANT: Elizabeth L. Dlugokenski

LOCATION: 3.7405 acres located at 1501 Old Joppa Road, Joppa
Tax Map: 65 / Grid: 2A / Parcel: 446
First (1st) Election District

ZONING: R1 / Urban Residential

REQUEST: A variance, pursuant to Section 267-22G(1) of the Harford County Code, to allow two panhandle lots to be created from a parcel in the R1 District.

TESTIMONY AND EVIDENCE OF RECORD:

The Applicants are the owners of an "L" shaped parcel containing 3.7405 acres located off Old Joppa Road in the Joppa area. The property is zoned R1/Urban Residential, which would normally allow a parcel of this size to be developed into six lots.

The Applicants live on the subject parcel and desire to divide it into three lots. They wish to build a new home for themselves, and create two additional lots for, they hope, the eventual transfer to their children. Mrs. Dlugokenski testified that she is not interested in creating any more than three lots. However, because of the unusual configuration and location of the parcel, three lots cannot be developed without two lots being served by panhandles.

The parcel has a total of almost 168 feet of road frontage on Stans Road, which is a private, but improved lane off Old Joppa Road. On the other hand, the parcel has approximately 426 feet of frontage on Faber Road, which is also a private road accessing Old Joppa Road. While there is sufficient road frontage on Faber Road, Stans Road is actually the street on which the lot must front, according to the Department of Planning and Zoning. Given the minimum frontage requirements for lots in the R1 District, it is simply impossible to front three lots on Stans Road with each having adequate road frontage. It is in fact impossible to site two lots on Stans Road and meet the lot frontage requirement. Accordingly, while only one lot is allowed to be subdivided with a panhandle, the Applicants are requesting a variance to allow two lots on panhandles.

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According to Mrs. Dlugokenski, she plans for lots two and three to actually access Old Joppa Road by Faber Road, the second of the two private lanes on which the parcel fronts. Both lots will accordingly have frontage on Faber Road. The use of Faber Road by these lots will be controlled by a common drive agreement which Mrs. Dlugokenski states has already been agreed to. While the panhandles will be shown as accessing Stans Road, the lots will, in fact, access Faber Road by way of separate driveways.

For the Harford County Department of Planning and Zoning next testified Anthony McClune. Mr. McClune concurred with the Applicants that their overall parcel does not contain sufficient road frontage to provide three lots with sufficient road frontage on Stans Road without the requested variance. Only one panhandle is allowed as a right and, accordingly, the variance is requested to allow two lots to be created with panhandle drives. However, Mr. McClune verified that Lots 2 and 3 will not, in fact, use Stans Road but will actually use Faber Road. Mr. McClune explained that Faber Road is treated differently than Stans Road by Harford County as it considers Stans Road as having adequate street width, whereas Faber Road does not. However, neither road is a public road.

Mr. McClune and the Department agree that Faber Road can be used for access, provided a common drive agreement is entered into between the parties and other users of Faber Road. Mr. McClune also indicated that the subject parcel can potentially be subdivided into as many as six lots, but the Applicants have expressed their intention to limit development to three lots.

The Report of the Department of Planning and Zoning states, inter alia:

“The Department finds that the subject property is unique based on its configuration and limited amount of road frontage. The proposed lots will meet all other requirements for lots within the R1/Urban Residential District. The lots will be consistent with other lots in the area. The requested variance will not have an adverse impact on the neighborhood or the intent of the Code.”

No testimony or evidence was presented in opposition.

APPLICABLE LAW:

Section 267-22G(1) of the Harford County Code states:

“(1) Except in Agricultural and Rural Residential Districts, with regard to a 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.”

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Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

- A. *Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 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 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.*
- B. *In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants own a 3.74 acre parcel in the relatively heavily developed area of Joppa. Their lot, very unusually, has no frontage on a public street. It has, instead, frontage on two private lanes, being Stans Road and Faber Road. Even though both roads are used by the residents who front on these roads, and both are paved, Harford County treats Stans Road, and not Faber, as the road on which the lots to be developed from the Dlugokenski property must be oriented. Harford County Code requires that these lots have minimum road frontage. If Stans Road is considered the street on which they must front, then three lots cannot be developed without the variance.

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However, if Faber Road is considered the street for frontage purposes, more than sufficient frontage exists to meet Harford County Code requirements.

There would appear to be very little if any actual distinction between Faber Road and Stans Road. Certainly, the use of Faber Road, instead of Stans Road, by two of the lots to be subdivided from the Dlugokenski property will cause no perceptible impact of any kind on the neighborhood.

The Applicants most clearly have an unusually shaped lot with peculiar characteristics. These unusual characteristics prohibit the Applicants from subdividing their parcel into three lots as they would be able to if they had frontage on a public road, or if Faber Road instead of Stans Road were considered to be the applicable street for road frontage purposes. This unusual parcel configuration causes the Applicants a difficulty in preventing them from subdividing the parcel, as they would otherwise be able to do as a matter of right, without the requested variance.

It is found that the granting of the variance would cause no adverse impact or harm to the adjoining properties or neighborhood. On the other hand, the denial of the variance would cause the Applicants unnecessary hardship.

CONCLUSION:

For the above reasons, it is recommended that the variance allowing two panhandle lots to be created from the subject property be approved, subject to the following conditions:

1. The Applicants shall prepare a preliminary plan to be reviewed and approved by the Department of Planning and Zoning.
2. The Applicants shall submit a final plat to the Department of Planning and Zoning to be approved and recorded among the Land Records of Harford County.
3. A common drive agreement for the use of Faber Road shall be submitted to the County for review and approval prior to receipt of final plat.

Date: December 10, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on JANUARY 11, 2008.