Tax Map/Block/Parcel
No. 64-3-10,251

Building Permit/Zoning
Certificate 94-0648

Case ZA-100

OFFICIAL DECISION
ZONING ADMINISTRATOR
CARROLL COUNTY, MD.

APPLICANT: Dorothy E. Waltz
2309 Deer Park Road
Finksburg, MD 21048

REQUEST: A variance reducing the minimum lot area requirement from 40,000 square feet to about 31,603 square feet and 26,768 square feet respectively, and such other variances to lot dimensions and setbacks as may be required to permit the diversion of an existing parcel into two lots.

LOCATION: 2309 Deer Park Road in E.D. 4

APPLICABLE REGULATIONS: Art. 5C, Sec. 5C.5; Art. 15, Sect. 15.5

HEARING HELD: May 4, 1994 and May 19, 1994

FINDINGS AND CONCLUSION

BACKGROUND:

Mr. and Mrs. Dayton Waltz acquired the subject property in two parcels, the first in 1948 (Parcel 10), and second in 1964 (Parcel 251). Both parcels were created from the Worth Barnes property. The stated purpose for the second purchase was for a future building site for one of their daughters.

Creation of the first parcel predated the subdivision regulations, which were adopted April 23, 1963. The second parcel was created as the first off-conveyance from the Worth Barnes property. At that time the property was zoned "A" Agriculture and the minimum lot size was 20,000 square feet, 100 feet wide. The subject lot complied. In 1981 the property was rezoned to "R-40,000" Residential district as part of the Finksburg Comprehensive Plan. The two Waltz parcels became nonconforming lots, subject to the modifications allowed under Sec. 15.1(b) for use as building sites.

In 1988 the remaining Worth Barnes property was sold for development. The developer, Mr. James Ridgely, was faced with two options: major subdivision, or if his design resulted in three lots or less, minor subdivision, which is a shorter and simpler process. As part of the subdivision process, the developer consulted with the Health Department. Testimony indicates that a representative of that department advised the developer or his engineer that the first off-conveyance (which went to the Waltzes) was not a buildable lot. That opinion was apparently based on the requirements in effect in 1988.

The developer knew that if he could create two of his lots by off-conveyance, the minor subdivision process was an option. He then approached Mrs. Waltz, who, at the time, was recently widowed, about combining her two lots into one, on the premise that her second lot was unbuildable anyway. The combination of her two lots would thus erase one off-conveyance and make

it available for use by the owner of the remainder of the property. Relying on the information presented to her, Mrs. Waltz agreed and signed the deed to combine her property. The plan of subdivision proceeded to completion, including two lots created by off-conveyance.

Later, as a result of an inquiry regarding a boundary dispute, Mrs. Waltz learned that her second lot was a buildable lot at the time it was created in 1964; and that zoning regulations would have allowed it to be used for a single family residence, based on the provisions of Sec. 15.1(b). Mrs. Waltz now wishes to re-create her two lots.

The Waltz property can only be divided by subdivision. Neither of the proposed lots complies with current regulations.
Hence this variance request.

Mr. Christopher Bieling, owner of the adjoining property to the southwest, appeared in protest and presented a petition against the variance signed by other homeowners in Worth Acres. His testimony is that he relied on information from his realtor, later confirmed by County staff, to the effect that the Waltz property is a single lot. Mr. Bieling stated that the open area adjoining his lot was a factor in his decision to purchase in Worth Acres. Several of the other neighbors testified briefly to that effect at the first hearing.

Mr. Bieling's concerns include:

1) Increased traffic hazard caused by the vehicles from the additional residence accessing Deer Park Road. In support of his opinion, he cited a 45 mph speed limit on Deer Park Road where it passes the subject property, a school bus stop at Byron Drive and, a State Police record of 12 accidents during 1993 and 1994 at the intersection of Deer Park Road and Md. Rt. 91.

2) A smaller lot will result in a smaller house, inconsistent with the homes in Worth Acres. He fears that the property values in Worth Acres will be diminished, and will affect his and the other property owners' abilities to secure future financing.

Given the volume of traffic presently using Deer Park Road, I find the argument that one additional residence will significantly increase the hazard unreasonable. Likewise, Mr. Bieling's fear that his home will be devalued is based on presumptions which were at least partially refuted by the applicant's attorney, and in any event were unsubstantiated by any probative evidence.

DECISION

(This case resulted in a lengthy hearing. This decision does not attempt to recount the entire testimony.)

Based on the testimony and evidence presented at the hearing(s), the variance is granted. Factors considered in making this decision are as follows:

The practical difficulty in this case is that there is insufficient lot area within the Waltz property for the creation of two lots under current regulations, and no additional land is available. The unreasonable hardship is that Mrs. Waltz has lost valuable equity in her property, that is, the value of a second lot.

Based on the circumstances under which Mrs. Waltz signed the deed combining her properties, I find that the practical difficulty and unreasonable hardship, while caused by actions of the applicant, is a result of incorrect information given to her by others. In fact, authorization of the variance is justified to alleviate the hardship that would otherwise result.

The testimony regarding whether or not one of Mrs. Waltz's daughters will occupy the proposed residence, has no bearing on this decision. Recreation of the second lot requires processing as a minor subdivision. Future use of the property cannot be restricted as to ownership or occupancy.

DATE: June 9, 1994

Solveig L. Smith

Solveig L. Smith, Zoning Administrator

CC: Zoning Enforcement

File: Case 130.DEC