

FREDERICK COUNTY BOARD OF APPEALS
STAFF REPORT FOR MAY 26, 2022 @ 7pm

Case Number: B-22-10

Appellant: Frank Chiaramonte

Appeal: Claiming an Appeal of Administrative Error regarding Division of Planning and Permitting's Determination of Subdivision Potential under §1-19-7.300 of the Frederick County Code

Location: Tax Map 31, Parcel 19, Tax ID# 11-281176 (43.224 acres)

Planning Region: Walkersville

Zoning District: Agricultural (A)

Comp. Plan Designation: Agricultural/Rural

Applicable Ordinances: Sec. 1-19-3.230 APPEALS
Sec. 1-19-7.300. AGRICULTURAL DISTRICT.

BACKGROUND:

The Appellant has filed this appeal in connection with a Determination Letter by the Division of Planning and Permitting, dated November 2, 2021, (Appellant's Exhibit A) regarding the subdivision potential of a 43.224-acre parcel of land at Tax Map 31, Parcel 19, Tax ID# 11-281176 (the "Subject Parcel"). This Determination Letter concluded that the Subject Parcel is not an "original tract" as defined in §1-19-7.300 (B) of the Frederick County Code, and therefore has no subdivision potential.

The Appellant has requested that the Board of Appeals find that the Division erred in determining that the Subject Parcel has no subdivision potential. The Appellant also makes an argument related to whether or not this appeal was submitted in time (within 30 days of the final determination), but that question is moot since the appeal is currently before the Board of Appeals.

APPLICABLE LAW:

§ 1-19-3.230. APPEALS.

(A) Appeals to the Board of Appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the jurisdiction affected by any decisions of the administrative officer. Such appeal shall be taken within 30 days after the date of the action or decision being appealed, by filing with the officer from whom the appeal is taken and with the Board of Appeals a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

(B) An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Appeals after notice of appeal shall have been filed with him that by reason of the facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

(C) The Board of Appeals shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

(D) In exercising the above-mentioned powers such Board may, in conformity with MD. Ann. Code, Art. 66B, as amended, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

§ 1-19-7.300. AGRICULTURAL DISTRICT.

(A) In the Agricultural Zoning District, the preferred use is agriculture. The operation at any time of any machinery used in farming procedures and all other agricultural operations shall be permitted and have preference over all other uses.

(B) The minimum lot size for single-family dwellings will be 40,000 square feet and, except as provided in § 1-19-7.300(C) [*applicable only when the applicant is proposing to cluster lots*], subdivision will be permitted only as follows: a minor subdivision of 3 lots will be permitted to be subdivided off an original tract of land; thereafter land will have to be rezoned before additional dwellings, other than tenant houses, may be built. An original tract of land shall be as described in the county land records as of August 18, 1976. [Emphasis added]

(C) Clustering. *[This subsection is not relevant to this appeal.]*

DISCUSSION:

The Frederick County Code defines an original agricultural tract, or “original tract” as specifically stated in § 1-19-7.300(B) as a parcel or tract of land “as described in the land records as of August 18, 1976.”¹

In this case, the Subject Parcel was part of a 204.42-acre parcel that is described in a deed recorded in the County land records on August 21, 1947 (L.464 F.352) (the “1947 Tract”). The Subject Parcel that is the focus of this appeal was created by a deed recorded on December 21, 1976 (L.1006 F.840). Since the Subject Parcel was created after August 18, 1976, it is not an “original tract” for purposes of § 1-19-7.300(B). Therefore, it has no subdivision potential.

The fact that a lot (“Lot 1”) was subdivided from the Subject Parcel in 1984 (Plat Book 28, page 132) does not change this analysis or the legality of further subdivision. Lot 1 should not have been approved, but this approval does not give the Appellant the right to further subdivide the Subject Parcel.

The Division of Planning and Permitting did not err in its November 2, 2021 Determination. Since the Subject Parcel is not an original tract under §1-19-7.300(B), it cannot be further subdivided.

ACTION NEEDED:

Staff requests that the Board review the Appellant’s request per Sections 1-19-3.230 and 1-19-7.300 of the Frederick County Zoning Ordinance and render a decision upholding the November 2, 2021 Determination Letter from the Division of Planning and Permitting.

¹ Similarly, §1-16-3 of the County Code defines “original agricultural tract” as an “agriculturally zoned tract of land described in the county land records as of August 18, 1976.”