

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

ZAAP # 21-0058

BRICK HOUSE FARM MINOR SUBDIVISION

THIRD ELECTION DISTRICT

DATE HEARD: AUGUST 18, 2022

ORDERED BY:

**Mr. Ichniowski, Ms. Delahay,
Mr. Miedzinski, Mr. Payne and Mr. Richardson**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: September 8, 2022

Pleadings

Sean and Kaitlin O’Grady (“the Appellants”) appeal the February 28, 2022 Planning Commission decision to approve the Family Conveyance subdivision plan per Section 30.14.14 of the Subdivision Ordinance.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on March 22, 2022, and March 29, 2022. The hearing notice was also posted on the Property. The file contains the certification of mailing to all adjoining landowners, including those located across a street. Each person designated in the application as owning land that is located within two hundred feet of the Subject Property was notified by mail, sent to the address furnished with the application. The agenda was also posted on the St. Mary’s County website on May 4, 2022. Subsequently, following a continuance of the original hearing date, the appeal request was again advertised in *The Southern Maryland News* on July 29, 2022 and August 5, 2022, and was posted on the County’s website on August 12, 2022. Therefore, the Board finds and concludes that there has been compliance with the notice requirements.

Public Hearing

A public hearing was conducted at 6:30 p.m. on August 18, 2022 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, the proceedings were recorded electronically, and the following was presented.

The Property

James and Lois Owens (“the Applicants”) own the Subject Property, a 21.47-acre property located at Tax Map 33, Grid 6, Parcel 285 at 23850 Brick House Farm Lane, Hollywood, MD

20636. The Subject Property is in the Rural Preservation District (RPD) zoning district.

The St. Mary's County Comprehensive Zoning Ordinance

Pursuant to § 30.14.4 of the St. Mary's County Comprehensive Zoning Ordinance ("CZO"):

The Planning Commission may approve an additional lot(s) on a private road for purposes of a family conveyance, providing the following requirements are met:

- a. The sale or transfer of such lot(s) shall be limited to the property owner(s) of record on or before May 25, 2004.
- b. The lot to be conveyed shall only be conveyed to a family member, being father, mother, son, daughter, grandfather, grandmother, grandson, or granddaughter of the grantor.
- c. A family member shall not receive more than one lot.
- d. The property owner shall demonstrated that the private road is adequate to accommodate the additional traffic generated by the lot(s). Private roads created within a property being subdivided shall meet the private road standards of this Ordinance.
- e. After approval of a family conveyance, and prior to the recordation of the plat, the grantor of the family conveyance shall enter into an agreement with the County that:
 - a. Contains the grantor's obligations under this section;
 - b. Is recorded in the land records of St. Mary's County;
 - c. Is noted on the subdivision plat; and
 - d. Prohibits the grantee from transferring the conveyed lot to a third party for at least five years from the date of final approval of the family conveyance, except in a case of severe hardship, as determined by the Director of Land Use and Growth Management
- f. Access on and use of the private road must be assured by the property owner.
- g. A grantee of a lot created by these provisions

may not be a grantee in another conveyance in the same subdivision or any other subdivision using these provisions.

- h. The provisions of this section shall not prohibit the conveyance of interest in a lot to a third party as security for a mortgage or deed of trust.

Staff Testimony

Stacy Clements, Environmental Planner for the Department of Land Use & Growth

Management, offered the following testimony:

- A Technical Evaluation Committee meeting concerning the project was held on June 23, 2021.
- Proposed Lot 1A will be the 8th lot under the 15 acres on Windy Way and Brick House Farm Lane. Per the Subdivision Ordinance, 8 or more lots under 15 acres can only be permitted through a family conveyance.
- The total lots/farmsteads on Windy Way and Brick House Farm are 12.
- Sale or transfer of lots for family conveyance are only available to those owners of record on or before May 25, 2004. James and Lois owned the subject property since September 16, 1995. In 2007 a Boundary Line Adjustment Plat was recorded adjusting the property line between Farmstead 5000-1 and Lot 1.
- The proposed lot, if approved, will be conveyed to James and Lois Owens' daughter, April Renee Owens.
- The road has an existing R20 paved entrance off St. John's Road and is well-kept. It varies from approximately 12' wide to 13' wide. It is paved for the first 1,030 feet and gravel for the remaining 700 feet. LUGM believes the road is adequate for the additional proposed user.
- Mr. Owens has maintained the road from Windy Way to St. John's Road since

2011.

Evidence Submitted at the Hearing by the Applicant

The Applicant submitted a PowerPoint presentation, pictures, and oral testimony, including the following evidence:

- Chris Longmore, of Dugan, McKissick, and Longmore represented Appellant. He was joined by Barry Vukmer, surveyor.
- The lot that is being created will be conveyed to the Applicants' daughter, April Renee Owens. Ms. Owens has not previously received a family conveyance lot.
- Applicants first acquired the property on September 16, 1995. The original farmstead has since been subdivided and the new lots created were conveyed to others. The name of Farmstead 1 was, through one of these subdivisions, changed to Farmstead 500-1.
- In 2007, the boundaries of Farmstead 1 were adjusted and additional land area was added to the original farmstead. This additional land area was not owned by the Applicants prior to the relevant cutoff date, but was added, through a BLAP, to a parcel that was owned by Applicants prior to the relevant cutoff date.
 - Applicant introduced and made reference to a similar project in the past where a family conveyance was granted for lands similarly added to a parcel through a BLAP. In that case, land not owned prior to March, 2004 was added to a parcel that was owned prior to March, 2004; a family conveyance involving that transferred land was approved.
- A road maintenance agreement will be required, and Applicants agree to pay half of the road maintenance for the portion of the road on the O'Grady's property. Applicants would be willing to make this a condition of approval of the road.

Evidence Submitted at the Hearing by the Appellants

The Appellants submitted a PowerPoint presentation, pictures, and oral testimony, including the following evidence:

- John Quinn, of Kelly & Quinn, represented Appellant. He was joined by Appellant Sean O’Grady.
- Appellants presented the following issue before the Board: “whether applicants for subdivision meet the requirements for family conveyance – specifically, were the applicants property owners of record on or before May 25, 2004?”
- The Subdivision Ordinance restricts family conveyances to “property owner(s) of record on or before May 25, 2004.”
- The intent of the family conveyance provision is to “allow people owning land at the time of enactment the flexibility to give lots to their family members,” and was drafted only to apply to those who owned property as of May 25, 2004, and not subsequent purchases of the property.
- A portion of the land proposed to be conveyed was not owned by the Applicants prior to May 25, 2004. A parcel known as “Farmstead 1,” subsequently renamed Farmstead 500-1 and Farmstead 5000-1, was owned by Applicants prior to May 25, 2004. In December, 2005, Applicants purchased an adjoining property property known as Agricultural Parcel A. In January, 2007, a Boundary Line Adjustment Plat was recorded transferring approximately 3.9 acres of Agricultural Parcel A to “Lot 1.”
- Applicants contend this does not fit the Subdivision Ordinance’s requirement that “the sale or transfer of such lot(s) shall be limited to the property owner(s) of record on or before May 25, 2004.”

- Additionally, Sean O’Grady testified that he did not believe the private road could accommodate the traffic generated by an additional user. He testified that some of the lots serviced by the road contain in-law suites, increasing the traffic that house contributes to the road. He testified that wear and tear on the road have been concerns of his since moving to his house three years ago.
- Mr. O’Grady has paid \$900 towards paving the road and \$200 in sealing it.
- Additionally, Mr. O’Grady testified that when he bought his house he only imagined that it could be built “past him,” and was “okay with that.”
- Mr. Quinn argued that the Bean subdivision referenced by Mr. Longmore as a prior example of a factually similar family conveyance could be distinguished from the case at hand, as the BLAP and family conveyance were performed concurrently in the Bean subdivision. Mr. Quinn also suggested that it was very likely approval of the Bean subdivision was a mistake that was not realized at the time.

Public Testimony

No members of the public testified at the public hearing.

Decision

Upon review of the facts and circumstances, the Board upholds the Planning Commission’s approval and approves Family Conveyance subdivision plan. The following considerations support our finding:

First, the Board notes that this matter is heard *de novo*, and the Applicants must demonstrate each requirement of Subdivision Ordinance § 30.14.4. The primary issue raised by Appellants is the first of these standards: whether or not the Owens were “the property owners of record on or before May 25, 2004.” Applicants argue they are property owners of record, because

they owned the parent parcel prior to May 25, 2004. Appellants argue the Owens are not, because that same parent parcel was augmented to include lands the Owens did not own prior to May 25, 2004, and that these augmented lands constitute a portion of the proposed family conveyance lot. Applicants' attorney provided an example of a factually similar family conveyance subdivision in the past, and Appellants' attorney disputes that example should be viewed as binding precedent.

When an administrative agency's decision comes under judicial review, that agency's determination is "prima facie correct and presumed valid." *Ramsay, Scarlett & Co., Inc. v. Comptroller of the Treasury*, 302 Md. 825, 838. The Board concedes that it finds itself, in this matter, in an odd situation of reviewing a past decision about which little is known, and from that limited review determining whether it is precedent. Based upon the facts known of the Bean subdivision, the Board does find it is an example of a family conveyance similar to the one proposed in this matter. In both cases, a family conveyance is at stake; in both cases, the family conveyance includes lands not owned by the property owners prior to May 25, 2004; in both cases, that land was added, through a Boundary Line Adjustment Plat, to a parcel that was owned prior to May 25, 2004. Faced with the presumption the prior decision of the board was "prima facie correct and valid," we do not see compelling evidence to believe there was a mistake of fact or misapprehension of the Bean conveyance. Under those facts, the Bean subdivision was approved, and we find, for this and for further reasons below, the Owens subdivision ought to be approved as well.

Precedent would not be binding if the decision made was clearly erroneous. The Board does not feel that has been demonstrated in this matter. The statutory language of the code is sparse and unembellished, and Applicants' counsel urges the Board to say that a "property owner of record" means the same as "parcel owner of record." We believe this is a reasonable

interpretation of the language in the Subdivision Ordinance. Adopting Appellants' reasoning, a property owner who augments an otherwise conforming property could jeopardize their right to develop under this section of the Subdivision Ordinance if they ever perform a Boundary Line Adjustment Plat. We believe this would be a harsh and undesired outcome.

For the reasons above – a desire to honor precedent, to achieve good policy, and to resolve an ambiguity of the Ordinance in a manner that strikes a fair balance between interested parties – the Board believes Applicants satisfy this first requirement.

Having satisfied the first requirement, Applicants must yet satisfy the remaining lengthy list of criteria for a family conveyance. Of these, the only dispute raised before the Board is whether the private road can accommodate the additional users this new family conveyance lot would spawn. The other criteria have been sufficiently demonstrated in the record, or have yet to be performed. It is not disputed that April Renee Owens is the Applicants' daughter and that she has not received more than one family conveyance lot; it is not disputed that a conforming plat and road maintenance agreement will be recorded, that access and use of the private road will be granted, or that the future restrictions on conveyance of such a lot will be implicated. The only open question is whether the property owner has demonstrated the private road is adequate to accommodate the additional traffic.

The Board answers this question in the affirmative. Pictures were provided by both parties that show the road to appear to be in good and serviceable state. The Board does not believe approval of one more lot will materially alter its condition. The Applicants offered to assume – and the Board will impose as a condition - the responsibility of paying for half of the maintenance costs on the O'Grady's portion of the shared road. There was testimony from Applicant's surveyor that the private road was compliant with the code, and there was not a section of the private road

standards in the Subdivision Ordinance the Appellants stated was not meant. Given the state of the road, as shown before the Board, we feel the Applicants have demonstrated that the road can accommodate an additional parcel.

Having made the demonstrations required of them, the Applicants' request for this one, additional family conveyance lot should be approved.

ORDER

PURSUANT to Sean and Kaitlin O'Grady's appeal of the February 28, 2022 Planning Commission decision to approve the Family Conveyance subdivision plan of James and Lois Owens per Section 30.14.14 of the Subdivision Ordinance; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is

ORDERED, by the St. Mary's County Board of Appeals, that the February 28, 2022 Planning Commission decision approving the Family Conveyance subdivision plan is **UPHELD**, and it is further

ORDERED, by the St. Mary's County Board of Appeals, that the Family Conveyance subdivision plan of James and Lois Owens per Section 30.14.14 of the Subdivision Ordinance **APPROVED**, subject to the following conditions:

1. Applicants and their successors shall pay half of the maintenance costs of the private road on the O'Grady parcel, and any additional properties subdivided in the future that use this portion of the road shall pay a *pro rata* share of this expense.

Date: Sep 13, 2022, 2022

Daniel F. Ichniowski
Daniel F. Ichniowski (Sep 13, 2022 14:52 EDT)

Daniel F. Ichniowski, Chairman

Those voting to approve the concept plan:

Mr. Ichniowski, Mr. Miedzinski, and Mr. Richardson

Those voting to deny the concept plan:

Ms. Delahay and Mr. Payne

Approved as to form and legal sufficiency

Stephen H Scott

Stephen H Scott (Sep 13, 2022 15:19 EDT)

Steve Scott, Board of Appeals Attorney

NOTICE TO APPELLANT

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order; otherwise, they will be discarded.

OGRADY APPEAL ORDER ZAAP 21-0058 - Brick House Farm (1)

Final Audit Report

2022-09-13

Created:	2022-09-09
By:	Amanda Yowell (amanda.yowell@stmarysmd.com)
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"OGRADY APPEAL ORDER ZAAP 21-0058 -Brick House Farm (1)" History

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