



STATEMENT IN OPPOSITION TO CASE NO. 2017-0229-V
REQUEST FOR VARIANCE BY RICHARD & MARY DAVIS
SUBMITTED TO THE ADMINISTRATIVE HEARING OFFICER
OCTOBER 3, 2017

The Applicants in this case are requesting a variance to allow further subdivision of approximately 13 acres of Rural Agricultural zoned land in Southern Anne Arundel County. The 13 acres is part of an original parcel of approximately 25 acres that was subsequently subdivided into 5 parcels (including the 13 acres) under the now defunct Family Conveyance provisions.

Essentially, the Applicants' seek to resurrect the practice of Family Conveyances through their request for a variance. Their right to subdivide the property as a Family Conveyance terminated in 2005 with the enactment of County Bill 3-05, which repealed all of the laws that authorized that practice. As shown in the attached documents, the County Council expressly voted to bar legacy properties from continuing to receive that benefit. As a result, it is now unlawful to award density rights in Anne Arundel County based on family lineage.

We concur with the findings of the Office of Planning and Zoning (OPZ) and urge you to deny this Application. Granting this variance would adversely affect our community by setting a precedent that would undermine the integrity of the RA zoning in our area. When the County Council ended the Family Conveyance program 12 years ago, it was widely recognized that this practice was transforming the rural agricultural landscape into a suburban one. That was and is contrary to a key goal of the General Development Plan, which is to maintain the rural character and environmental health of areas like Herring Bay.

Moreover, the acreage shortfall in this case defies the common sense meaning of a variance. As noted by OPZ, the lot would have to be more than twice its current size to meet the letter of the law (30 acres instead of 13 acres). That's a shortfall of nearly 60 percent.

Changes of this scale—in size and consequence—are tantamount to an upzoning of a property and should only be made by the County Council as part of the Comprehensive Rezoning Process, not by administrative fiat. Variance request 2017-0229-V must be denied.

Respectfully submitted,

Nancy Oliver

Attachment A, Legislative History of Bill 3-05

**Legislative history regarding the repeal of Family Conveyances (2004-2005)
Courtesy of the Office of the County Council**

Overview

Family Conveyance

Recod of Subdivision (Article 26, now Article 17)

Bill 67-04

Initial draft removed family conveyance – see 11/5/04 memo and comparison chart

Mr. Reilly introduced Amendment No. 50 – adding “Legacy Development” (11/15/04) he withdrew the amendment

Mr. Reilly introduced Amendment No. 71 again adding “Legacy Development (12/6/04) – this amendment passed 4-3.

Bill 67-04 was eventually withdrawn and Bill 3-05 was introduced.

Bill 3-05

Legacy Development was in the initial draft.

Mr. Reilly introduced Amendment No. 13 removing Legacy Development from the article (2/22/05) – this amendment passed 6-0.

Attachment A, page 2 of 4
Nancy Oliver, on behalf of the Advocates for Herring Bay

Copy of amendment 13 to Bill 3-05 (first of two pages)

AMENDMENTS TO BILL NO. 3-05
(Subdivision and Development)

February 22, 2005

Introduced by Mr. Reilly

Amendment No. 13

On page 12 of the proposed bill, after line 42, add:

“SECTION 8. And be it further enacted, That Article 26 of the Anne Arundel County Code (1985, as amended), as attached hereto and as incorporated herein and adopted by Section 2 of this Ordinance, be amended to read as follows:”

On page 10 of Article 26 of the Anne Arundel County Code (1985, as amended), § 26-3-201(a) is amended as follows:

“26-3-201. Sketch plan application.

(a) **Generally.** A subdivision other than a minor subdivision [or a legacy development] shall be initiated by filing an application for sketch plan approval prepared by and under the seal of a qualified professional.”

On page 13 of Article 26 of the Anne Arundel County Code (1985, as amended), § 26-3-301(a) is amended to read as follows:

“26-3-301. Final plan application.

(a) **Generally.** An application for final plan approval shall be filed within one year after the date of approval of a sketch plan, or the application for sketch plan approval is void. A minor subdivision [or a legacy development] is initiated by the filing of an application for final plan approval. An application for final plan approval shall be prepared by and under the seal of a qualified professional.”

On page 23 of Article 26 of the Anne Arundel County Code (1985, as amended), § 26-3-506(g) is amended to read as follows:

“26-3-506. Open space and recreation area.

(g) **Fee in lieu.** [In a legacy development, the developer shall pay a fee in lieu of providing any required open space. In all other developments, the] ~~THE~~ Planning and Zoning Officer may require a developer to pay a fee in lieu of establishment of open space if the Planning and Zoning Officer determines that land is not of significant quality and size for community purposes. The fee shall be used to provide open space land or recreational facilities in the County.”

Copy of Amendment 13 to Bill 3-05, second of two pages

On pages 74 and 75 of Article 26 of the Anne Arundel County Code (1985, as amended), Subtitle 11 of Title 7 is amended to read as follows:

"[SUBTITLE 11. LEGACY DEVELOPMENTS

26-7-1101. Applicability

A person who owned land as of January 1, 1981, or that person's son, daughter, stepson, stepdaughter, grandson, or granddaughter who owned the land as of the effective date of Bill No. 3-05, may develop a legacy development.

26-7-1102. Restrictions on conveyance.

(a) **Persons to whom lots shall be conveyed.** Lots created as part of a legacy development shall be conveyed to the developer's father, mother, son, daughter, stepson, stepdaughter, grandson, or granddaughter so long as that person has never before been the recipient of a lot that formed part of a legacy development.

(b) **When conveyed.** The conveyance to the developer's father, mother, son, daughter, stepson, stepdaughter, grandson, or granddaughter, shall occur contemporaneously with but immediately after the record plat is recorded among the land records of the County.

(c) **Further conveyance.** The recipient of a lot created as part of a legacy development may not convey the lot to a third party for a period of at least 10 years from the date the record plat is recorded among the land records of the County.

(d) **Restrictions included in deed and noted on record plat.** The deed to the developer's father, mother, son, daughter, stepson, stepdaughter, grandson, or granddaughter shall recite that the recipient of the lot has never before been the recipient of a lot that formed part of legacy development. The deed and the record plat shall include the restriction that conveyance to a third party is prohibited for a period of at least 10 years from the date the record plat is recorded among the land records.]"

This amendment eliminates "legacy developments" from this article.

Copy of Vote Tally for Amendments 1 through 14 to Bill 3-05

BILL NO. 3-05 RESOLUTION NO. _____
AMENDMENT NO.(s) 1-14

Motion to suspend rules - Out of Order

to hear [] _____

to vote [] _____

to introduce [] _____

to hold [] _____

Name	YEA	NAY
Beidle	<u>✓</u>	_____
Middlebrooks	<u>✓</u>	_____
Burlison	<u>✓</u>	_____
Vitale	<u>✓</u>	_____
Samorajczyk	<u>Absent</u>	_____
Reilly	<u>✓</u>	_____
Dillon	<u>✓</u>	_____

Date 2/22/05