

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

LYNN R. & LINDA K. MARTIN
12239 Ashton Road
Clear Spring, MD 21722

Appeal No. AP2007-057

Appellants

OPINION

This action is a request for a variance from the minimum 100' left side yard setback yard to 0' for the construction of a mulch storage area related to an existing greenhouse. The subject property is located at 12239 Ashton Road, Clear Spring, MD 21722, is owned by the Appellants, and is zoned Rural Business Existing.

A public hearing was held before a full Board on July 11, 2007. The Appellants offered evidence and testimony in support of the appeal. Opponents offered evidence and testimony in opposition to the appeal.

FINDINGS OF FACT

The following findings of fact are made by the Board, based upon the testimony given and all data and other evidence presented, and upon a study of the specific property involved, as well as the neighborhood:

1. Appellants have operated a greenhouse business on the subject 3.36-acre parcel since 1999.
2. The subject lot was created from a then-118 acre farm that Appellants' family has operated since 1979.
3. Appellants seek this variance to allow for mulch storage bins along the property boundary line.
4. The open bins are 3-sided concrete block structures, approximately 6' or less height.
5. The proposed location of the bins is the only place on the property that allows for accessibility to the bins for truck delivery and customer pickup.
6. The topography of the property also limits the area where the mulch bins could be

sited.

7. Some of Appellants' neighbors have no objection to this request.

8. In opposition, several persons raised concerns regarding the potential collapse of the structures and complained that the proximity of the structures to the boundary line impeded access by farm vehicles to the neighboring properties.

9. In response, Appellants asserted that the bins posed no obstruction to any access routes, but consented to a 5' setback from the property line.

10. Received and filed with the Board was a memorandum from Kathy A. Kroboth, Washington County Zoning Coordinator, advising that the appeal is consistent with the Comprehensive Plan.

RATIONALE

This Board has authority to grant a variance upon a showing by the Appellant of practical difficulty or undue hardship. Sections 25.2(c) and 25.56, Zoning Ordinance for Washington County, Maryland. "Practical Difficulty" may be found by the Board when: (1) strict compliance would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome; and (2) denying the variances would do substantial injustice to the applicant and a lesser relaxation than that applied for would not give substantial relief; and (3) granting the variance would observe the spirit of the Ordinance and secure public safety and welfare. Section 25.56(a).

The subject request arises due to the property's size, shape, and topography. The proposed site is the most-appropriate location for storage bins, as it is the only flat location accessible to trucks for pickup and delivery. There was no evidence presented that would show how strict compliance would achieve any material positive benefits. Strict compliance would result prevent the property from being used to fullest and best extent. Mulch storage and sales is a natural accessory use to a greenhouse operation. No evidence was presented that the proposed use was incompatible with the neighborhood; disruptive of neighbors' quiet enjoyment of their properties; detrimental to surrounding property values; generative of excessive odors, dust, gas, smoke, fumes, vibrations, or glare; generative of traffic that would exceed the capacity of existing infrastructure; or that the proposal was an inappropriate use of land or structure. The opposition presented to this matter was largely speculative (i.e., the bin's walls might collapse), but we agree that a buffer with the property line should be created. Therefore, a 95' variance will be granted rather than a 100' variance.

Based upon all of the testimony and evidence presented, this Board finds that the subject request does not adversely affect the public health, safety, security, morals, or general welfare, nor does it result in dangerous traffic conditions, or jeopardize the life and property of neighborhood residents. Accordingly, for the reasons set forth herein, this appeal is hereby GRANTED AS MODIFIED/CONDITIONED AS SET FORTH BELOW this 10th day of August, 2007.

Conditions

1. A 5' left side yard setback shall be observed at all times.

BOARD OF APPEALS

By: Bert Iseminger, Chair