

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

THOMAS R. & VICKIE L. SCHLEIGH
1705 Mt. Aetna Road
Hagerstown, MD 21742

Appeal No. AP2007-072

Appellants

OPINION

This action is a request for a variance from the required 8' left side yard setback to 2' for the construction of a detached garage. The subject property is located at 1705 Mt. Aetna Road, Hagerstown, MD 21742, is owned by the Appellant, and is zoned Residential, Suburban.

A public hearing was held before a full Board on August 22, 2007. The Appellant 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. The Appellants wish to build a single-story detached 22' x 32' garage at the end of their driveway.
2. Due to septic field constraints and the size and shape of the property, the proposed location is asserted to be the only place available for the garage.
3. The Appellants currently park several trucks on the property that are used in the conduct of a construction/repair business; these will be stored inside if this appeal is granted.
4. Concerns were expressed by opponents regarding possible covenant prohibitions and the slippery slope allegedly created by allowing a commercial use in a residential neighborhood.
5. No evidence was presented that showed that the subject property was unique and distinguished from other properties generally found in the neighborhood.

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 property does not appear to be unique such that variance relief could be entertained. "[A] property's peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the ordinance's more severe impact on the specific property because of the property's uniqueness before any consideration will be given to whether practical difficulty or unnecessary hardship exists." *Cromwell v. Ward*, 102 Md. App. 691, 721 (1995).

Moreover, we find that Appellants have failed to establish a practical difficulty that would allow us to grant the requested relief even if the property was unique. Moreover, the evidence failed to show that Appellants' garage could not be achieved with either a lesser variance or a different site. We are concerned that the proposed encroachment is relatively extreme and could have a significant affect on Appellants' neighbor. Finally, we note that even if the failure to grant this variance prevents Appellants' from having a garage anywhere on the property, such a result would not necessarily rise to the level of a "substantial injustice" as there are many homeowners who do not have the luxury of a garage.

We cannot find that the subject request does not adversely affect the public health, safety, security, morals, or general welfare; 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 DENIED this 20th day of September, 2007.

BOARD OF APPEALS

By: Bert Iseminger, Chair