

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

JAMIE L. FUNK & MATTHEW M. GLADHILL
12159 Cove Road
Clear Spring, MD 21722

Appeal No. AP2007-077

Appellants

OPINION

This action is a request for a variance from minimum 40 foot front yard setback to 24.4 feet for a single family dwelling currently under construction. The subject property is located at 12164 Cove Road, Clear Spring, MD, is owned by the Appellants, and is zoned Environmental Conservation.

A public hearing was held before a full Board on September 19, 2007. The Appellants offered evidence and testimony in support of the appeal. Neither opposing testimony nor evidence was presented to the Board.

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 are building a single family dwelling and own both parcels 1 and 2.
2. Appellants erred in siting the house; they measured from the edge of the road rather than from the edge of the public right-of-way when determining, erroneously, the setback area.
3. A right-of-way dedication is required because they are subdividing the property.
4. There are trees and rocks in the back yard that complicate siting the residence further to the rear.
5. It will cost \$20,000 or more to re-do the foundation if this variance is not granted.
6. Other structures in the area are as close or closer to the road than will be this house.

7. 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 an error, the correction of which would impose an unnecessary and expensive burden upon the Appellant to cure the encroachment. The dwelling is under construction, and the siting error appears to have been an honest mistake, although Appellants, engaged in the construction trade, should have exercised greater diligence in ascertaining their measuring responsibilities. We expect them to do so in the future. There was no evidence presented that would show how strict compliance would achieve any practical, and useful, benefits. Other structures in the immediate area have equal or lesser setbacks. 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.

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 WITH CONDITIONS AS SET FORTH BELOW this 19th day of October, 2007.

Conditions

No further construction work will be performed until the subdivision plat is recorded.

BOARD OF APPEALS
By: Bert Iseminger, Chair