

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

JOSEPH YUNGWIRTH  
13852 Marsh Pike  
Hagerstown, MD 21742

Appeal No. AP2007-101

Appellant

OPINION

This action is an appeal for a variance from a minimum 15' left side yard setback to 4" for the placement of an 8'x14' residential storage shed. The subject property is located at 13852 Marsh Pike, Hagerstown, MD 21742, is owned by the Appellant, and is zoned Agricultural Rural.

A public hearing was held before a full Board on January 2, 2008. The Appellant offered evidence and testimony in support of the appeal. Opposition was presented to this 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. Appellant seeks to place an 8'x14' residential storage shed on the property now improved by his residence.
2. Appellant's confusion regarding the location of a right-of-way and the properties boundaries resulted in the placement of the shed as herein proposed.
3. The shed is screened by existing pine trees.
4. If strict compliance were required, the 15' setback would result in the shed's placement in the middle of the backyard, thus greatly increasing its obtrusiveness for Appellant and his neighbors.
5. Opposition was presented to this request, centering on the size of the shed, its negative visual effect on neighbors, and the extremity of the variance requested.

## 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 proposed use is a reasonable and permitted use of the property. The property's shape and size and the placement of existing improvements thereon necessitate this variance, and the existing trees will act as a buffer between the shed and neighboring properties. 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. There was evidence, however, that the severity of the requested variance would result in an unfair burden on Appellant's most-affected neighbor, and that a lesser relaxation of the Ordinance's requirements would still provide Appellant with substantial relief to use the property for the intended accessory use. The grant of the variance as requested, without reduction, would effectively prevent Appellant from performing necessary yard work alongside and maintenance to the shed.

This Board finds that the requested change and expansion of non-conforming use 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. However, given our concern regarding the extreme relief requested, we will reduce the size of the variance granted to establish a left side yard setback of 3'. Accordingly, for the reasons set forth herein, this appeal is GRANTED AS MODIFIED AND WITH CONDITIONS this 1<sup>st</sup> day of February, 2008.

### *Conditions*

1. Appellant is granted a left side yard variance from 15' to 3' for the placement of the shed.
2. Appellant shall take necessary steps to enclose the foundation of the shed to prevent rodent inhabitation thereunder.

BOARD OF APPEALS  
By: Bert Iseminger, Chair