

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

TONI RENEE SULLIVAN
19224 Paradise Manor Drive
Hagerstown, MD 21741-0246
Appellant

*
*
*
*

Appeal No. AP2008-007

OPINION

This action is a request for a variance from the required 40' rear yard setback to 3' for the purpose of eliminating an encroachment of an existing accessory structure on an adjacent property. The subject property is located at 19224 Paradise Manor Drive, Hagerstown, Maryland, is owned by the Appellant, and is zoned Residential Rural.

A public hearing was held before the Board on March 5, 2008. The Appellant offered evidence and testimony in support of the appeal. No 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. The house on the subject property was built in the early 19th century and an old garage (the encroaching structure) is also from a similar period.
2. The developer of the adjacent residential subdivision discovered the encroachment during a survey and is gifting property from Lot 14 to the Appellant to cure the encroachment.
3. If the gift were to include enough land so to obviate the need for this variance, then Lot 14 would be rendered undevelopable.
4. Vegetative buffering is anticipated.
5. No one testified in opposition to this request.

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).

This situation arises due to the placement of nineteenth century structures over the property line. It was not due to any act or omission of Appellant, and this variance seeks to cure the encroachment while still allowing the adjacent Lot 14 to be developable. No lesser variance would remedy the encroachment and allow Lot 14 to be buildable. 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. As this approach brings the property into compliance and does not affect the use of this property or adjacent properties, the grant of this request furthers the purposes of the Zoning Ordinance.

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 this 4th day of April, 2008.

BOARD OF APPEALS

By: Bert Iseminger, Chair