

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

RICHARD & TAMMY HUMMER
Appellants

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Appeal No. AP2008-049

OPINION

This action is an appeal for a variance from the minimum 100' setback from the northern property line to 0' and from the minimum 100' setback from the eastern property line to 60' for pre-existing decks on the subject property presently improved with a tavern. The subject property is located at 21400 Leiter Street, Leitersburg, Maryland, is owned by the Richard and Tammy Hummer, and is zoned Rural Business-Existing.

A public hearing was held before the Board on October 8, 2008. The Appellants offered evidence and testimony in support of the appeal. Opponents testified against 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. This request for a variance is a continuation of the saga began in AP2008-044.
2. The structure on the property is a 19th Century building that houses Leitersburg Tavern and has for many years.
3. The existing use is a principally-permitted use in this district.
4. The property is only 62'x156' in area.
5. A lumber deck (*Deck*) built in 1992 extends from the first floor of the Tavern and provides seating and standing area for customers.
6. The Deck is not really an impervious surface, as it is constructed with lumber and has cracks between its boards.
7. The Deck has encroached into the setback area since its construction in 1992.

8. There was a 6'x36' two-story covered porch (*Old Porch*) that has been replaced with a 16'x36' two-story covered porch (*New Porch*).

9. The New Porch doesn't create any additional impervious surfaces.

10. The property is surrounded by residential uses, which has led to complaints from Appellants and other neighbors regarding Tavern patrons' conduct. Concerns have included operation and enforcement issues, such as noise, littering, cursing, and other conduct not unexpected to occur at a tavern.

11. The Sheriff's Department has reported no "problems" with the Leitersburg Hotel, and 30 days of observation have revealed no violations of laws.

12. The Deck was constructed in 1992 without a building permit. The County closed the file in 1997 as there had been no further complaints.

13. In 2005, a complaint was filed regarding a replacement shed that allegedly failed to meet the setback. A building permit was issued for the structure and it was determined that Section 4.3(f) of the Ordinance applied and no setback variance was required.

14. This year, the permit for the New Porch was applied for and issued. The issuance of the building permit for the New Porch without variances granted by this Board was found to be administrative error in AP2008-044 and occasioned this appeal.

15. The New Porch does not encroach into the setbacks any more than the Deck. In fact, the Porch encroaches less than the Deck, as the Porch is constructed over the Deck and sits back 15' from its edge.

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).

In this appeal, the Appellants have sustained their burden for a variance. The proposed use

is a reasonable and principally-permitted use of the property. Given the property's 62'x156' area, strict compliance with the setbacks is impossible. Furthermore, the variance request for the Deck is for no greater encroachment than has existed since 1992, prior to the Appellants' purchase of the property. The property is unique given its age, size, shape, and long use as a tavern in a rural village.

The concerns raised by the opponents concerning patron conduct are operational, and not zoning, issues, and must be addressed in another forum. The weight of the evidence presented did not show that that the proposed Deck and Porch 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. For these reasons, we believe that granting this variance observes the spirit of the Ordinance. Finally, we note that "variance requests relating to requirements for bulk regulations, parking requirements, landscaping, and screening should be given preference when related to reuse or rehabilitation of existing buildings" in Rural Business – Existing districts. § 5E.5. Thus, we believe that grant of the requested variances upholds the spirit of the 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 WITH CONDITIONS AS SET FORTH BELOW by a 5–0 vote.

Conditions

1. Expansion of the deck beyond its current area is not permitted.
2. The Washington County Engineering Department shall review the stormwater management issues occasioned by this site during the site plan review process.
3. Appellants shall utilize screening and drop canvas barriers as directed by the Planning Commission pursuant to the site plan review process.

BOARD OF APPEALS

By: Bert Iseminger, Chair

Issued: November 7, 2008