

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

SCOTT BEZANSON  
Appellant

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Appeal No. AP2009-002

OPINION

This action is a request for a variance from the 60' minimum lot width to 54.9' for the relocation of a property line. The subject property is located at 18916 Orchard Terrace Road, Hagerstown, Maryland is owned by Daniel Pheil, and is zoned Residential Urban.

A public hearing was held before the Board on February 4, 2009. 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 subject property is a pentagonal-shaped lot improved with a residence.
2. The appellant resides in a residence on the neighboring lot (18916 Orchard Terrace Road).
3. Appellant wishes to build an addition to his existing residence on the neighboring lot. To meet the side yard setback requirement, Appellant needs additional land.
4. To accommodate his need for additional land, Mr. Pheil has offered to convey a portion of the subject property to Appellant so that Appellant's property is enlarged.
5. Without the additional land, Appellant's addition would be within one foot of the existing property line.
6. The proposed conveyance necessitates this variance, as it reduces the width of the subject property.
7. Both lots were created prior to the enactment of zoning in the county.

8. Appellant's neighbors have no objections to this proposal.

#### 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 the subject appeal, Appellant has met its burden of demonstrating a practical difficulty. The size and shape of the property limit the available area for the proposed addition. The proposed property conveyance will preserve the setback of the neighboring house, while minimally reducing the width of the subject property. Strict compliance with the Ordinance would be of no benefit, as the reduced lot width is a less-objectionable nonconformance than would a severe encroachment into the proscribed setback area. No one testified in opposition to the proposal, and 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 by a 5-0 vote.

BOARD OF APPEALS  
By: Bert Iseminger, Chair

Issued: March 6, 2009