

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

TRAVIS SARNO
Appellant

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Appeal No. AP2009-20

CORRECTED OPINION†

This action is a request for an expansion of a non-conforming use and a variance from the minimum 40' front yard setback along Sun Valley Drive to 22' to construct a 2,250 sq. ft. addition to an existing retail liquor store. The subject property is located at 20219 Jefferson Boulevard, Hagerstown, Maryland, is owned by the Appellant, and is zoned Residential Rural.

A public hearing was held before the Board on April 29, 2009. The Appellant offered evidence and testimony in support of the appeal. Some 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 proposes a 2,250 sq. ft. addition to Wooden Keg Liquors.
2. The size of the addition is driven by the need to include various structural components (bathrooms) that are mandated by the Americans with Disabilities Act (ADA).
3. The location of a drainage swale and septic field on the property necessitate placement of the addition as proposed herein.
4. The existing building is about 2,100 sq. ft. in area.
5. Opponents testified that the proposed addition would negatively impact their view

† This Corrected Opinion remedies a clerical error in the original Opinion.

from their home and speculatively fear that it would reduce the value of their real estate.

6. Other structures in the area encroach into the setback requirements, so this proposal will not be inapposite with other structures in the neighborhood.

RATIONALE

Nonconforming uses are governed by Section 4.3 of the Zoning Ordinance for Washington County, Maryland. Section 25.6 of the Ordinance directs the Board to consider the following factors, as applicable, in rendering its decision: (a) the number of people residing or working in the immediate area concerned; (b) the orderly growth of a community; (c) traffic conditions and facilities; (d) the effect of such use upon the peaceful enjoyment of people in their homes; (e) the conservation of property values; (f) the effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values; (g) the most appropriate use of land and structure; (h) the decision of the courts; (i) the purpose of these regulations as set forth herein; (j) the type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches and the like. A variance may be granted upon a showing by 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).

A prior appeal granted a request for an expansion of non-conforming use for this property. Appellant could have expanded the building for business purposes within the previously-approved area save for the additional requirements (bathrooms) mandated by the ADA. The proposed use is an acceptable intensification of the use already occurring on the property, and it will not create additional traffic or other adverse effects beyond those inherent with the existing use. The enlargement of the business structure will not materially alter the character of the neighborhood or create any additional incompatibilities with surrounding uses.

Likewise, the variance request is unexceptional. Requiring strict compliance with the setback requirements would provide no practical benefit to the public while preventing its reasonable use for a permitted purpose. It would not promote traffic safety because no traffic concerns were implicated by the variance request, and it would not promote incompatibilities in the neighborhood as other structures already encroach into the setback area. Furthermore, a lesser variance is impracticable given the size and shape of the parcel, the location of existing improvements thereon, and the necessary size of the addition per ADA requirements. The

denial of this variance would frustrate Appellant's legitimate use of his property for no zoning benefit. For these reasons, we believe that the grant of this variance upholds the spirit of the Ordinance.

In sum, 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 vote of 5-0.

BOARD OF APPEALS

By: Bert Iseminger, Chair

Date Issued: June 12, 2009