

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

RICHARD AND DEBORAH TOMS  
Appellant

\*  
\*  
\*  
\*

Appeal No. AP2009-025

OPINION

This action is a request for a variance from the minimum 10' right side yard setback to 0' from an existing accessory structure and to 3' from an existing porch on an apartment building for the relocation of a property line. The subject property is located at 13718 Pennsylvania Avenue, Hagerstown, Maryland, is owned by the Appellants, and is zoned Business General.

A public hearing was held before the Board on May 27, 2009. Appellants 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. Appellants propose realignment of the property line to remedy an encroachment issue.
2. Appellants' neighbor, the owner of a property improved with Breakaways II Sports Lounge, constructed, without an approved permit, a 24'x19' covered porch approximately 5' from the property line, and then installed a fence over the property line and onto the subject property.
3. This appeal facilitates a land swap between Appellants and the encroaching neighbor to allow for the neighbor's structures to be in compliance with setback requirements.
4. The requested variances are required because of the location of an existing structure

on the subject property—a shed.

5. The applicable building codes require fire walls between the structures and the property lines.

6. Commercial uses surround the subject property.

7. 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).

Appellants’ proposed use is a reasonable use of the subject property. Strict compliance is unnecessarily burdensome and impractical given the size and shape of the lot and the location of existing structures thereon (and of the neighboring lot, as well). This land swap will serve to remove an encroachment and lessen the nonconforming nature of the subject lot and the neighboring parcel. The property is surrounded by commercial uses. 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. Failing to grant this variance would serve no public purpose, and it would deny Appellants a reasonable and customary use of their property. Considering all of these facts, we feel that the grant of this request advances the spirit and purpose 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 this 26<sup>th</sup> day of June, 2009, with the condition set forth below,

by a 5–0 vote.

*Condition*

1. The final subdivision plat shall note the requirement that all fire walls required by the Building or Fire Codes in effect on the date that this appeal is granted shall be maintained upon any subsequent transfer of the affected, platted properties (namely, the subject parcel and the affected neighboring parcel).

BOARD OF APPEALS

By: Bert Iseminger, Chair

Date Issued: June 26, 2009