

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

RITCHEY TOT LOT, LLC
Appellant

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Appeal No. AP2009-042

OPINION

This action is a request for a variance from minimum right side setback of 50' (granted under AP2005-146) to 40' from an established daycare structure. The subject property is located at 13514 Little Antietam Road, Hagerstown, Maryland, is owned by the Appellant, and is zoned Rural Business - New.

A public hearing was held before the Board on August 19, 2009. 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. Adopted and incorporated herein are those Findings of Fact and Rationale set forth in the Opinion in AP2005-146.
2. Appellant has operated a daycare facility in the existing building for the past several years.
3. Appellant plans to enlarge the existing building. When resurveying the property in preparation of a site plan for the addition, a prior surveying error was discovered. The existing building is 40' from the property line, and that is the variance that should have been requested in AP2005-146 four years ago.
4. Nothing has physically changed on the site since the original request was approved in AP2005-146, and the proposed addition will not encroach into the setback area that was granted in AP2005-146.
5. Therefore, this variance request serves to conform the relief requested in AP2005-146 to the pre-existing and actual condition of the property and the improvements thereon.
6. 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).

In the instant case, Appellant seeks confirmation that our intention in AP2005-146 was to grant a variance to allow the encroachment of an existing building used as a day care facility into the building setback envelope. Nothing physically has changed on the property since we first considered the requested variance; however, a recent survey has shown that the prior variance relief was not, in actuality, the quantitative variance amount needed to sanctify use of the property as proposed, and undertaken, by Appellant.

The size and shape of the property, and the location of the dwelling thereon, necessitate the need for this variance. No adverse effects were demonstrated by the proposed use such that the granting of the variances would violate spirit of the Ordinance. In fact, operation of the facility has occurred for several years without incident and without change to the physical features on and boundaries of the property. Failing to grant this relief would have no practical benefit, would unreasonably prevent use of the property for a permitted purpose, and would inflict a substantial injustice upon the Appellant. 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.

BOARD OF APPEALS

By: Bert Iseminger, Chair

Date Issued: September 4, 2009