

**BOARD OF ZONING APPEALS**

**February 7, 2018**

**NEW LOCATION:** County Administration Building, 100 W. Washington Street, Public Meeting Room 2000, Hagerstown, Maryland, on the following applications:

**AGENDA**

**DOCKET NO. AP2018-001:** An appeal made by Scott & Vicky J. Allen for a variance from required 12 ft. left side yard setback to 1 ft. for construction of a two car detached garage on property owned by the Appellant and located at 625 Beaver Creek Road, Hagerstown, zoned Residential Transition - **GRANTED**

**DOCKET NO. AP2018-002:** An appeal made by Randy L. & Kimberly Baker for a variance from required 8 ft. left side yard setback to 3.8 ft. for storage building under construction on property owned by the Appellant and located at 12829 Bradbury Avenue, Smithsburg, zoned Residential Suburban - **GRANTED**

**DOCKET NO. AP2018-003:** An appeal made by Dellaposta Properties LLC for a variance from required 8 ft. left side yard setback to 4 ft. for construction of a pool pavilion on property owned by the Appellant and located at 13140 Fountain Head Road, Hagerstown, zoned Residential Urban - **GRANTED**

**DOCKET NO. AP2017-031:** An appeal made by the Estate of Ned Amsley, et al. of the Planning Commission's approval of site plan SP-16-005 Bowman Cornfield on property owned by Bowman Spielman LLC and located at 15919 Spielman Road, Williamsport, zoned Highway Interchange – **POSTPONED**

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Pursuant to the Maryland Open Meetings Law, notice is hereby given that the deliberations of the Board of Zoning Appeals are open to the public. Furthermore, the Board, at its discretion, may render a decision as to some or all of the cases at the hearing described above or at a subsequent hearing, the date and time of which will be announced prior to the conclusion of the public hearing. Individuals requiring special accommodations are requested to contact Kathy Kroboth at 240-313-2469 Voice, 240-313-2130 Voice/TDD to make arrangements no later than January 29, 2018. Any person desiring a stenographic transcript shall be responsible for supplying a competent stenographer.

The Board of Appeals reserves the right to vary the order in which the cases are called. Please take note of the Amended Rules of Procedure (Adopted July 5, 2006), Public Hearing, Section 4(d) which states:

Applicants shall have ten (10) minutes in which to present their request and may, upon request to and permission of the Board, receive an additional twenty (20) minutes for their presentation. Following the Applicant's case in chief, other individuals may receive three (3) minutes to testify, except in the circumstance where an individual is representing a group, in which case said individual shall be given eight (8) minutes to testify.

Those Applicants requesting the additional twenty (20) minutes shall have their case automatically moved to the end of the docket.

For extraordinary cause, the Board may extend any time period set forth herein, or otherwise modify or suspend these Rules, to uphold the spirit of the Ordinance and to do substantial justice.

Neal Glessner, Chairman  
Board of Zoning Appeals

**BEFORE THE BOARD OF APPEALS  
FOR WASHINGTON COUNTY, MARYLAND**

**Scott & Vicky J. Allen  
Applicants**

**Appeal No. AP2018-001**

**OPINION**

This appeal is a request for a variance from the required 12' left side yard setback to 1' for construction of a two-car detached garage. The subject property is located at 625 Beaver Creek Road, Hagerstown, Maryland; is owned by the Applicants; and is zoned Residential Transition. The Board held a public hearing on the matter on February 7, 2018.

**Findings of Fact**

Based upon the testimony given, all information and evidence presented, and upon a study of the specific property involved and the neighborhood in which it is located, the Board makes the following findings of fact:

1. The Applicants seek a variance to construct a two-car detached garage on the subject property.
2. The garage will be located at the end of the existing driveway.
3. An underground gas tank prevents strict compliance with the left side yard setback.
4. There is no other place to locate the garage without variance relief.
5. The Applicants own the adjacent undeveloped lot (which is the most-affected property).
6. No one testified in opposition to this request.

**Rationale**

This Board has authority to grant a variance upon a showing of practical difficulty or undue hardship.<sup>1</sup> §§ 25.2(c) and 25.56. "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 variance 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. § 25.56(A).

This request for variance relief is reasonable. The proposed garage is a permitted accessory use on this property. The need for variance relief is occasioned by the size and shape of the lot and the presence of an underground gas tank. The proposed location is the most logical site for the garage and places it at the end of the existing driveway. No viable alternative locations exist for placement of it without variance relief. The Applicants own the most-affected neighboring property, which is undeveloped, and no one presented any opposition to this request. Therefore, we conclude that the grant of this request observes the spirit of the Ordinance and secures the public safety and welfare.

Accordingly, this request for a variance is hereby GRANTED by a vote of 5-0.

BOARD OF APPEALS

By: Neal R. Glessner, Chair

Date Issued: March 9, 2018

**BEFORE THE BOARD OF APPEALS  
FOR WASHINGTON COUNTY, MARYLAND**

**Randy L. & Kimberly Baker  
Applicants**

**Appeal No. AP2018-002**

**OPINION**

This appeal is a request for a variance from the required 8' left side yard setback to 3.8' for a storage building under construction. The subject property is located at 12829 Bradbury Avenue, Smithsburg, Maryland; is owned by the Applicants; and is zoned Residential Suburban. The Board held a public hearing on the matter on February 7, 2018.

**Findings of Fact**

Based upon the testimony given, all information and evidence presented, and upon a study of the specific property involved and the neighborhood in which it is located, the Board makes the following findings of fact:

1. The Applicants have constructed a metal storage building on the subject property.
2. After construction, a survey showed that the building encroached into the left side yard setback.
3. The Applicants sited the building according to pins purportedly marking the property line.
4. The subsequent survey showed those pins to be erroneously placed.
5. The property is irregularly shaped.
6. The Applicants' neighbors have no objection to the request.
7. No one testified in opposition to this request.

**Rationale**

This Board has authority to grant a variance upon a showing of practical difficulty or undue hardship.<sup>1</sup> §§ 25.2(c) and 25.56. "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 variance 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. § 25.56(A).

This request for variance relief is reasonable. The proposed storage building is a permitted accessory use in this zone. The need for variance relief is occasioned by the size and irregular shape of the lot. The need for this relief was further compounded by the erroneous placement of property line markers, the inaccuracy of which was only discovered after the erection of the building. Requiring the Applicants to tear down and relocate the structure would impose a significant and burdensome hardship upon them and would create a substantial injustice. No opposition was presented to this request. Therefore, we conclude that the grant of this request observes the spirit of the Ordinance and secures the public safety and welfare.

Accordingly, this request for a variance is hereby GRANTED by a vote of 5-0.

BOARD OF APPEALS

By: Neal R. Glessner, Chair

Date Issued: March 9, 2018

**BEFORE THE BOARD OF APPEALS  
FOR WASHINGTON COUNTY, MARYLAND**

**Dellaposta Properties LLC  
Applicant**

**Appeal No. AP2018-003**

**OPINION**

This appeal is a request for a variance from the required 8' left side yard setback to 4' for construction of a pool pavilion. The subject property is located at 13140 Fountain Head Road, Hagerstown, Maryland; is owned by the Applicant; and is zoned Residential Urban. The Board held a public hearing on the matter on February 7, 2018.

**Findings of Fact**

Based upon the testimony given, all information and evidence presented, and upon a study of the specific property involved and the neighborhood in which it is located, the Board makes the following findings of fact:

1. The Applicant seeks a variance to construct a pool pavilion on the subject property.
2. The pavilion will replace a 12'x14' screened gazebo which is in the same location as the proposed pavilion.
3. The permanent pavilion will be more aesthetically attractive than the gazebo.
4. The proposed placement of the pavilion is necessitated as proposed due to the existing retaining wall, the size, shape, and topography of the lot, and the location of existing utility infrastructure.
5. The pavilion will not encroach into the setback more than the gazebo does now.
6. The proposed placement of the pavilion is the most logical placement for the structure given the size and shape of the property and the location of existing structures thereon.
7. The most-affected neighbor consents to the relief requested herein.
8. No one testified in opposition to this request.

## **Rationale**

This Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56. “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 variance 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. § 25.56(A).

This request for variance relief is reasonable. The proposed pavilion is a permitted accessory use in this zone, and strict compliance with the setback requirement would frustrate this use. The need for variance relief is occasioned by the size, shape, and topography of the lot, and the location of the existing pool, retaining wall, and utility infrastructure. A lesser relaxation is impracticable for the same reason. The proposed location is the most appropriate location given the site of the existing pool, and it will replace the temporary gazebo now serving that same structure. The encroachment is consented to by the most-affected neighbor. No opposition was presented to this request. Therefore, we conclude that the grant of this request observes the spirit of the Ordinance and secures the public safety and welfare.

Accordingly, this request for a variance is hereby GRANTED by a vote of 5–0.

BOARD OF APPEALS  
By: Neal R. Glessner, Chair

Date Issued: March 9, 2018