

BOARD OF APPEALS

October 31, 2018

County Administration Building, 100 W. Washington St., Meeting Room 2000, Hagerstown, at 7:00 p.m.

AGENDA

DOCKET NO. AP2018-028: An appeal made by Michael J. Flynn for a variance from minimum 12 ft. right side yard setback to 3 ft. for the construction of a detached garage on property owned by the Appellant and located at 21908 Beaverbrook Drive, Smithsburg, zoned Residential Transition - **DENIED**

DOCKET NO. AP2018-029: An appeal made by Willie Eby c/o Mennonite School, for a variance from minimum 30 acres to 15 acres to establish a private school encompassing grades 1 through 12 on property owned by Andrew J. Michael, IV and located at 17004 Sakech Lane, Hagerstown, zoned Agricultural (Rural) - **GRANTED**

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 October 22, 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.

Paul Fulk, Chairman
Board of Zoning Appeals

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

MICHAEL J. FLYNN

Appeal No. AP2018-028

Appellant

OPINION

This appeal is a request for a variance to reduce the side yard setback from twelve (12) feet to three (3) feet. The subject property is located at 21908 Beaverbrook Drive, Smithsburg, Maryland 21783; is owned by Michael J. Flynn; and is zoned Residential Transition. The Board held a public hearing on the matter on October 31, 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. Appellant is the owner of the subject property, located at 21908 Beaverbrook Drive, Smithsburg, Maryland. The subject property slopes to the rear and to the right side of the home (left from the street). The "left" side of the home is opposite the driveway. The septic field is in the area directly in front of the dwelling on the property. The home has an attached three (3) car garage with side entry from the driveway.

2. Appellant proposes to construct a 36' by 40' detached garage building in

order to store multiple vehicles, lawn equipment and to contain a workshop area. The proposed garage would be located at the head of the driveway and behind the rear façade of the home.

3. The home on subject property was constructed in 2005 and Appellant purchased the property in 2014. He has not made any alterations to the boundary lines, setbacks or topography during the time of his ownership.

4. There are other homes in the surrounding neighborhood which have detached garages, typically no larger than for two (2) cars.

5. There was no opposition presented 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). In the instant case, the applicable side yard setback requirement is 12 feet, which Appellant seeks to reduce to construct a detached garage.

* “When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive (“or”), Maryland courts generally have applied the more restrictive hardship standard to use variances, while applying the less restrictive practical difficulties standard to area variances because use variances are viewed as more drastic departures from zoning requirements.” *Belvoir Farms Homeowners Ass’n, Inc. v. North*, 355 Md. 259, 276 n.10 (1999) (citations omitted).

“‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.” *North v. St. Mary’s Cnty.*, 99 Md. App. 502, 514 (1994.) In this case, the subject property has multiple slopes which rule out locating the garage to the left or the rear of the residence. In addition, the septic field comprises most of the front yard area. The Board is satisfied that the only logical location for the garage is as proposed by Appellant, given the unique characteristics of the property.

The Board is not convinced that a practical difficulty or undue burden exist as result of the imposition of the setback requirements. It is clear that for Appellant to construct his proposed garage, the setback requirements pose a practical difficulty. However, it also appears that Appellant would require less relief from the Ordinance, or perhaps no relief, if he constructed a smaller garage. Appellant is requesting to construct a larger than typical garage building, which serve the purpose of garage, barn and shed all in one.[†] The proposed garage is larger than those which can be found on neighboring properties. Upon questioning of Appellant’s representative at the hearing, he acknowledged that the garage could be smaller, but may not permit the storage and workspace that Appellant seeks. In sum, Appellant could make the garage smaller, thus requiring lesser variance relief, but he desires the 36’ by 40’ building.

Variance relief is not intended relax the strict requirements of the Zoning

[†] This is in addition to his existing three-car garage attached to the home.

Ordinance based on convenience or the desire of the property owner. Pursuant to the criteria set forth in Section 25.56 of the Zoning Ordinance, a variance should be the minimum necessary to afford relief from the strict requirements imposed on a particular property. Put another way, Appellant must demonstrate that a lesser relaxation of the requirements would not give substantial relief. In the instant case, the requested relief is not the minimum necessary because Appellant could build a smaller garage which would still afford him the same benefit as his neighbors, with less relaxation from the side yard setback requirements. For example, if Appellant were to reduce the width of the garage by nine (9) feet, he would not require a side yard setback for construction. Appellant is able to conform to the requirements, or achieve the relief necessary with a lesser reduction of the side yard setback. While Appellant may believe he “needs” this additional space, he failed to provide evidence which would justify a finding of practical difficulty or undue burden simply because his desired dimensions are frustrated by the setback requirements. For all these reasons, we conclude that the request for variance relief does not meet the criteria set forth in the Zoning Ordinance and is not consistent with the spirit of the Ordinance.

Accordingly, this request for a variance to reduce the side yard setback to three (3) feet is hereby DENIED by a vote of 3-2.

BOARD OF APPEALS

By: Michael Zampelli, Co-Chair

Date Issued: November 29, 2018

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

**WILLIE EBY C/O MENNONITE
SCHOOL
Appellant**

Appeal No. AP2018-029

OPINION

This appeal is a request for a variance to reduce the minimum lot size requirement of thirty (30) acres to fifteen (15) acres to establish a private school encompassing grades 1 through 12 at the subject property. The subject property is located at 17004 Sakech Lane, Hagerstown, Maryland 21740; is owned by Andrew J. Michael, IV; and is zoned Agricultural (Rural). The Board held a public hearing on the matter on October 31, 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. Appellant presents this appeal on behalf of the Mennonite School and with the authority of the owner, Andrew J. Michael, IV. The subject property is located at 17004 Sakech Lane, Hagerstown, Maryland. The subject property is comprised of fifteen (15) acres of farm land, subdivided for seven (7) building lots, located between Cearfoss Pike and Fairview Road.

2. Appellant proposes to construct a private school for grades 1 through 12 in order to relocate the current school operating in the Huyetts Crossroads area. The existing school is located on 3.65 acres.

3. The proposed school will have a maximum enrollment of 150 students, ranging from Kindergarten to high school. The school will have a softball field and a jogging trail for outdoor activities. The site will have advanced stormwater management to address water runoff and flooding of the existing stream. The main entrance will be from Cearfoss Pike, although the site design considers a secondary access along Fairview Road, should it be necessary in the future.

4. There are numerous other schools throughout the County which have significantly higher enrollment numbers but occupy properties that do not comply with the Zoning Ordinance requirements. Northern Middle School has an enrollment of approximately 700 students but exists on approximately 13 acres.

5. Development of the subject property is likely to improve existing water runoff issues from the subject property to neighboring properties.

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

* “When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive (“or”), Maryland courts generally have applied the more restrictive hardship standard to use variances, while applying the less restrictive practical difficulties standard to area variances because use variances are viewed as more drastic departures from zoning requirements.” *Belvoir Farms Homeowners Ass’n, Inc. v. North*, 355 Md. 259, 276 n.10 (1999) (citations omitted).

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). In the instant case, Section 5A.6 of the Ordinance requires that Appellant have sixty (60) acres to establish a school that includes high school. Section 23.1(f) permits a modification by one-half if the school has combined grade level enrollment. Appellant is before the Board to request relief from the resulting 30-acre lot size requirement to a total of fifteen (15) acres.

Appellant seeks to reduce both to construct a detached garage.

“‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.” *North v. St. Mary’s Cnty.*, 99 Md. App. 502, 514 (1994).) In this case, the subject property has a topography which permits use and develop only as Appellant has proposed. If Appellant were required to acquire an additional fifteen (15) acres, it would just be the same problematic topography, which would go undeveloped based on the current site design.

The Appellant has demonstrated a practical difficulty and an undue burden if variance relief is not granted. Imposition of the 30-acre requirement would only serve to require Appellant to acquire twice as much land which would go unused and undeveloped. This is contrary to the spirit of the Ordinance given that it favors the use

of property as opposed to being dormant. Given the specific details and self-imposed limitations on Appellant's proposed school operation, the lot size requirement is an artificial barrier to orderly development of the property. † Appellant would be forced to expend needless funds and then assume ongoing responsibility for 15 acres of land that is not developed or improved. The slight relaxation of the setback requirements affords Appellant the necessary relief and avoid the unreasonable and unfair result of limiting what is otherwise a permitted and appropriate use of the subject property and an improvement on the existing school. For all these reasons, we conclude that the grant of variance relief secures public safety and welfare and upholds the spirit of the Ordinance.

Accordingly, this request for variance to reduce the minimum lot size from 30 acres to 15 acres is hereby GRANTED by a vote of 5-0.

BOARD OF APPEALS

By: Michael Zampelli, Co-Chair

Date Issued: November 30, 2018

† Ironically, if Appellant wanted to construct an elementary school or 300 students, twice the enrollment of the proposed school, it could do so without needing any relief from this Board.