

**BOARD OF APPEALS**

**March 30, 2022**

**County Administration Building, 100 W. Washington St., Meeting Room 2000, Hagerstown, at 6:00 p.m.**

**AGENDA**

**DOCKET NO. AP2022-008:** An appeal was made by Larry Miller for a variance from the maximum density of one dwelling unit per 30 acres to 15.15 acres to be able to subdivide parcel for future construction of dwelling on property owned by the appellant and located at 20919 Reno Monument Road, Boonsboro, Zoned Preservation.-**GRANTED**

**DOCKET NO. AP2022-009: SCHEDULED FOR APRIL 13<sup>TH</sup> HEARING**

**DOCKET NO. AP2022-010:** An appeal was made by R. Lee Downey for variances from the required 30 ft. front yard setback to 20 ft. for future construction of single-family dwellings on properties owned by the appellant and located at 10823, 10827, & 10831 Hershey Drive, Williamsport, Zoned Residential Transition. -**GRANTED**

**DOCKET NO. AP2022-011:** An appeal was made by Crown Incorporated of Hagerstown Maryland for a variance from the required 30 ft. front yard setback to 20 ft. for future construction of a single-family dwelling on property owned by the appellant and located at 10839 Hershey Drive, Williamsport, Zoned Residential Transition.-**GRANTED**

**DOCKET NO. AP2022-012:** An appeal was made by Shirley Ortega for a variance from the required 30 ft. front yard setback to 20 ft. for future construction of a single-family dwelling on property owned by the appellant and located at 10835 Hershey Drive, Williamsport, Zoned Residential Transition.-**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 Katie Rathvon at 240-313-2464 Voice, 240-313-2130 Voice/TDD no later than March 21, 2022. 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**

**LARRY MILLER**

**APPELLANT**

**APPEAL No. AP2022-008**

\* \* \* \* \*

**OPINION**

Larry Miller (hereinafter, “Appellant”) requests a variance from the maximum density of one (1) dwelling unit per 30 acres to one (1) dwelling unit on 15.15 acres, for construction of a future dwelling on a to-be subdivided parcel of the subject property. The subject property, owned by Appellant, is located at 20919 Reno Monument Road, Boonsboro, Maryland, and is zoned Preservation. The Board held a public hearing on the matter on March 30, 2022.

The appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County, Maryland (hereinafter, the “Ordinance”) and upon proper notice to the parties and general public as required.

**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 owns the subject property located at 20919 Reno Monument Road, Boonsboro, Maryland (since 2008). The subject property is zoned Preservation (P).
2. The subject property is unimproved and comprised of approximately 30.32 acres, which has been actively tenant-farmed for some time.
3. Appellant desires to subdivide the subject property to be able to sell one of the subdivided parcels to a cousin. Said cousin is not able to afford the purchase of the entire acreage; thus, the request for the density variance to allow one dwelling on the westernmost subdivided parcel to be sold to Appellant’s cousin.<sup>1</sup>

---

<sup>1</sup> Since the variance request is for the 15.15 acre parcel to be sold to Appellant’s cousin, then a similar, separate density variance application would have to be made in the future if a dwelling is proposed to be built on the remainder parcel.

4. The current tenant farmer has agreed to farm on the parcel to be retained by Appellant.

5. Section 5C.3 of the Ordinance limits the density on lots in the P Zoning District to one (1) dwelling unit per 30 acres owned; thus, a variance is required to reduce the density on the on the subject property.

6. Appellant provided the Board with a statement setting forth the reasons for the requested variance and marked-up copy of Plat 9342 showing the proposed subdivision of the subject property. These items were made a part of the record.

7. Several parcels in the immediate vicinity of the subject property are much smaller than 30 acres and are each improved by a single-family dwelling.

7. The owner of the adjoining 30.70 acre parcel to the East of the subject property testified that he has no issue with the variance as requested.

8. No other persons testified or provided written communications in support of or in opposition to the application.

9. An email was received and read into the record from the Maryland Department of Health stating: "Our office has no objection to the variance; however, to be able to subdivide, each lot would need to establish a 10,000 sq. ft. septic reserve area and have the wells drilled and located on the plat."

#### **RATIONALE**

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship (Ordinance §§25.2(c) and 25.56).<sup>2</sup> "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 (Ordinance §25.56(A)).

"Undue hardship" may be found when: (1) strict compliance with the

<sup>2</sup> "When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive ("or"), Maryland court 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).

Ordinance would prevent the applicant from securing a reasonable return from or to make reasonable use of the property; and (2) the difficulties or hardships are peculiar to the property and contrast with those of other property owners in the same district; and (3) the hardship is not the result of the applicant's own actions (Ordinance §25.56(B)).

Practical difficulty and undue hardship are the result of a property being unique. "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 matter, Appellant's proposal to subdivide the subject property and sell one of the two resulting parcels to a cousin is based on Appellant's desire to keep the subdivided parcel in the family and doing so in a manner that will not create a financial hardship on his cousin.

The Board finds that these are valid and desirable reasons for seeking the variance requested in this case, and that the proposed subdivision into two equal-sized parcels is the best approach, as it will result in the maximum amount of acreage for each subdivided parcel. The Board supports the desire to keep the parcel to be sold "in the family." The Board also notes the existence of smaller-sized improved parcels in the neighborhood and gives weight to the fact that the Applicant's proposal is supported by an adjoining neighbor and that no other neighbors testified in opposition.

For these reasons, the Board finds that strict compliance with the Ordinance would prevent Appellant from making a reasonable use of the subject property, the difficulties or hardships are peculiar to the property and contrast with those of other property owners in the same district, and the hardship is not the result of the applicant's own actions.

Therefore, Appellant's request for a variance from the maximum density of one (1) dwelling unit per thirty (30) acres of land to one (1) dwelling unit on 15.15 acres of the to-be subdivided and sold parcel of land, is GRANTED, by a vote of 5-0. Said

variance is granted upon the condition that subdivision of the subject property and sale of the proposed subdivided parcel will be consistent with the testimony and evidence presented herein and in compliance with all other applicable government regulations.

BOARD OF APPEALS

By: Paul Fulk, Co-Chair

**Date Issued: April 29, 2022**

Notice of Appeal Rights

Any person or persons, jointly or severally, aggrieved by any decision of the Board of Appeals, or any taxpayer, or any officer, department, board, or bureau of the jurisdiction, may appeal the same to the Circuit Court for Washington County within thirty (30) days, in a manner set forth in Md. Code Ann., Land Use, § 4-401.

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

**R. LEE DOWNEY**

\*

**APPEAL No. AP2022-010**

**APPELLANT**

\*

\* \* \* \* \*

**CROWN INCORPORATED OF  
HAGERSTOWN MARYLAND**

\*

**APPEAL No. AP2022-011**

**APPELLANT**

\*

\* \* \* \* \*

**SHIRLEY ORTEGA**

\*

**APPEAL No. AP2022-012**

**APPELLANT**

\*

\* \* \* \* \*

**OPINION**<sup>1</sup>

R. Lee Downey (hereinafter, “Downey”), Crown Incorporated of Hagerstown Maryland (hereinafter, “Crown”), and Shirley Ortega (hereinafter, “Ortega”) (Downey, Crown, and Ortega, hereinafter collectively, “Appellants”), each requests a variance from the required front yard setback of 30 feet to 20 feet, for construction of future dwellings on each of the subject properties. The subject properties are located at 10823, 10827, 10831, 10835, and 10839 Hershey Drive, Williamsport, Maryland, and are zoned Residential, Transition. The Board held a public hearing on the matters on March 30, 2022.

The appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County, Maryland (hereinafter, the “Ordinance”) and upon proper notice to the parties and general public as required.

**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:

<sup>1</sup> This Opinion is a combination of the three (3) appeals noted in the caption. These appeals involve five (5) contiguous lots in the same subdivision. Each appeal requests a similar variance based upon the same factor (*i.e.*, a significantly larger encroachment of the government-established flood plain upon the subject properties (post-subdivision)), and for the same reason (*i.e.*, said flood plain encroachment has shrunk the available building envelope on each lot). Therefore, the Board determined it would be more efficient to have a single opinion to address these appeals.

1. Appellant Downey owns the subject properties located at 10823 (Lot 567), 10827 (Lot 568), and 10831 (Lot 569) Hershey Drive, Williamsport, Maryland (since 1986), Appellant Crown owns the subject property located at 10839 (Lot 571) Hershey Drive, Williamsport, Maryland (since 2020), and Appellant Ortega owns the subject property located at 10835 (Lot 570) Hershey Drive, Williamsport, Maryland. The subject properties are zoned Residential, Transition (RT). Lots 567, 568, 569, and 570 are roughly rectangular in shape. Lot 571 is of an irregular pentagon shape. All of the lots are in Section 17 of the Van Lear Manor subdivision.

2. The subject properties are unimproved and vary in size from approximately 0.39 acres to 0.59 acres.

3. The final subdivision plats (Plat folios 10567-10569) for Section 17 of the Van Lear Manor subdivision (which includes the subject properties) was approved by the Washington County Planning Commission on February 3, 2016 and recorded by the developer (Appellant Downey) on February 8, 2016. Said plats depicted the "Limits of the 100-Year Flood Plain/Stream Buffer" and established a "B.R.L." (Building Restriction Line) along the North edge of said Flood Plain/Stream Buffer, running through and roughly bisecting from West to East each of the subject properties.

4. The aforementioned bisection of the subject properties limited the building envelope on each lot to the northernmost half thereof, but left sufficient room for future construction of a modestly-sized (~2,000 sf) single-family dwelling thereon within the setback requirements of the Ordinance.

5. On August 15, 2017, Washington County accepted changes and adjustments of the flood plain maps published by the U.S. Federal Emergency Management Agency (FEMA) for Washington County. Said changes and adjustments altered the North edge of the Flood Plain/Stream Buffer caused additional encroachment thereof upon the subject properties and significant decrease of the available building envelopes thereon.

6. The building envelope on each lot has been moved northward to accommodate the new FEMA flood maps; however, this adjustment exceeds the limit of the front yard setback on each lot. Appellants' engineering representative testified that Appellants petitioned FEMA for relief from the new maps, and the submitted exhibits show the maximum relief allowed by FEMA, which is the minimum relief needed by Appellants.

7. Section 7A.5(a) of the Ordinance establishes the front yard setback for a single-family dwelling on lots in the RT Zoning District to 30 feet; thus, a variance is required to reduce the front yard setback on each of the subject properties. Accordingly, each of the Appellants has made such application therefor.

8. Appellants provided the Board with statements prepared by Triad Engineering, Inc., setting forth the reasons for the requested variances (and addressing the criteria for both the practical difficulty and undue hardship standards), copies of the original approved subdivision plats for Section 17 in the Van Lear Manor subdivision, exhibits for their respective appeals showing the new locations of the proposed single-family dwellings on each of the subject properties, and aerial photographs showing the extent of the Flood Plain. All of these items were made a part of the record.

9. One person testified about a question pertaining to the flood plain. He had no opposition to the applications for variance.

10. No other persons testified or provided written communications in support of or in opposition to the application.

11. An email was received and read into the record from the County's Plan Reviewer and Flood Plain Manager stating that the variances are acceptable as long as the dwellings are constructed outside of the flood plain.

#### **RATIONALE**

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship (Ordinance §§25.2(c) and 25.56).<sup>2</sup> "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 (Ordinance §25.56(A)).

<sup>2</sup> "When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive ("or"), Maryland court 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).



“Undue hardship” may be found when: (1) strict compliance with the Ordinance would prevent the applicant from securing a reasonable return from or to make reasonable use of the property; and (2) the difficulties or hardships are peculiar to the property and contrast with those of other property owners in the same district; and (3) the hardship is not the result of the applicant’s own actions (Ordinance §25.56(B)).

Practical difficulty and undue hardship are the result of a property being unique. “‘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).

The Board finds that changes to the flood plain maps occurring after the original subdivision plats were approved have resulted in an undue hardship upon each of the Appellants. The Board notes that Appellants took appropriate steps to work with FEMA in an attempt to mitigate the impact of the flood plain map changes, and that the variance requests are the minimum necessary for the proposed construction of a single-family dwelling on each lot.

For these reasons, the Board finds that strict compliance with the Ordinance would prevent each of the Appellants from making a reasonable use of their respective subject property, that the difficulties or hardships are peculiar to these properties and contrast with those of other property owners in the same district, and the hardship is not the result of the Appellants’ respective actions.

Therefore, each variance requested from the required 30 foot front yard setback to 20 feet on each of the subject properties herein, is GRANTED, by a vote of 5-0 in each appeal. Said variances are granted upon the condition that the proposed placement and construction of a single-family dwelling on each of the subject properties be consistent with the testimony and evidence presented herein and in compliance with all other applicable government regulations.

BOARD OF APPEALS

By: Paul Fulk, Chair

**Date Issued: April 29, 2022**

Notice of Appeal Rights

Any person or persons, jointly or severally, aggrieved by any decision of the Board of Appeals, or any taxpayer, or any officer, department, board, or bureau of the jurisdiction, may appeal the same to the Circuit Court for Washington County within thirty (30) days, in a manner set forth in Md. Code Ann., Land Use, § 4-401.