

**BOARD OF APPEALS**

**October 12, 2022**

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

**AGENDA**

**DOCKET NO. AP2022-044:** An appeal was made by Karissa Cochran for a variance from the required 50 ft. rear yard setback to 24 ft. for future single-family dwelling on property being subdivided and owned by Sherry Kalbflesh Wigfield and located at 3708/3710 Harpers Ferry Road, Sharpsburg, Zoned Preservation/Rural Village. - **GRANTED**

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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 Katie Rathvon at 240-313-2464 Voice, 240-313-2130 Voice/TDD no later than October 3, 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.

Jay Miller, Chairman  
Board of Zoning Appeals

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

**KARISSA COCHRAN**

**Appellant**

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**Appeal No.: AP2022-044**

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**OPINION**

Karissa Cochran (hereinafter “Appellant”) requests a variance from the required 50-foot rear yard setback to 24 feet for a future single-family dwelling at the subject property which is to be subdivided. The subject property is located at 3710 Harpers Ferry Road, Sharpsburg, Maryland and is zoned Preservation and Rural Village. The Board held a public hearing in this matter on October 12, 2022.

This appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County 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. The subject property is located at 3710 Harpers Ferry Road, Sharpsburg, Maryland and is owned by Sherry Wigfield. The subject property is zoned Preservation and Rural Village.

2. The subject property is owned by Sherry Wigfield who is Appellant’s relative. The parties are in the process of subdividing the subject property from the existing lands at 3708 Harpers Ferry Road to create Appellant’s homestead lot.

3. The subject property consists of approximately 3.39 acres which will be

known as Lot 4 following the subdivision process. The property has split zoning with most falling under Preservation, and a small portion being Rural Village. The rear of the property is heavily wooded and slopes steeply. There is also a designated intermittent stream bed cutting through the middle of the property as shown on the county maps.

4. The subject property has split septic reserve areas which occupy most of the northwest corner. The proposed driveway extends as a panhandle and traverses around the septic reserve areas.

5. Appellant proposed to build a 2000-square foot home, constructed into the elevation of the property to avoid excavation.

6. The Preservation zoning district requires a 50-foot rear yard setback for residential properties.

7. Appellant notified the adjacent property owners of her plan for subdivision and construction and did not receive any objections.

8. There was no opposition presented to this appeal.

### **Rationale**

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

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<sup>1</sup> “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).

observe the spirit of the Ordinance and secure public safety and welfare. § 25.56(A).

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 subject property is unique because of the sloping and heavily wooded topography which covers the rear half of the lot area. These characteristics render this portion of the property unbuildable and force any development to the front portion of the lot. The intermittent stream bisects the property and although dry, presents another inherent barrier to building the proposed home in other locations on the subject property. The Board received evidence of the location of the septic reserve areas, which further limit the location of new structures. Appellant testified that the effect of these characteristics dictated the location of her home and forced her to build in the specific location proposed. The Board also notes that if this portion of the subject property were in the Rural Village district instead of the Preservation district, Appellant would need less setback area for the rear yard. These conditions create a hardship and without variance relief, Appellant would be unable to make reasonable use of the subject property. Strict compliance with the setback requirements would result in Appellant being denied the opportunity to join other family members who have subdivided their homestead lots adjacent to the subject property. This would not be consistent with the spirit and vision of the Zoning Ordinance. Based on the foregoing, the Board finds that requiring strict compliance with the Ordinance would prevent Appellant from making reasonable use of the property, that the difficulties are peculiar to the subject property,

and are not the result of Appellant's own actions.

Accordingly, the request for a variance from the required 50-foot rear yard setback to 24 feet for a future single-family dwelling at the subject property is GRANTED, by a vote of 4-1. The application is granted upon the condition that the proposed use be consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Jay Miller, Chair

**Date Issued: November 10, 2022**

Notice of Appeal Rights

Any party aggrieved by a final order of the Authority in a contested case, whether such decision is affirmative or negative in form, is entitled to file a petition for judicial review of that order to the Circuit Court for Washington County within thirty (30) days of the date of the order.