

BOARD OF APPEALS

June 13, 2018

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

AGENDA

DOCKET NO. AP2018-016: An appeal made by Smithsburg Little Sluggers League, Inc. for a variance from 50-ft side yard setback on south side to 15-ft, variance from required paved parking area of 3400 sq. ft. and variance to increase maximum lighting intensity to 60 foot candles for renovations to baseball field on property owned by Herman A Lewis Trust and located at 11735 White Hall Road, Smithsburg, zoned Agricultural Rural - Granted

DOCKET NO. AP2018-015: An appeal made by Student Trades Foundation for a variance from minimum lot area of 5,000 sq. ft. per lot to 3,750 sq. ft., minimum lot width of 35 ft. per lot to 25 ft. to create a semi-detached lot and variance from minimum 10 ft. exterior side yard setback to 5 ft. for construction of semi-detached dwellings on proposed subdivided lot on property owned by Woodrow A. Barron and located on the south side of Medway Road approximately 125 ft. west of Division Avenue, Hagerstown, zoned Residential Urban - 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 Becky Gander at 240-313-2466 Voice, 240-313-2130 Voice/TDD to make arrangements no later than June 4, 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**

**STUDENT TRADES FOUNDATION
Applicant**

Appeal No. AP2018-015

OPINION

This appeal is a request for a variance from the minimum lot area of 5,000 square feet per lot to 3,750 square feet, minimum lot width of 35 feet to 25 feet to create a semi-detached lot, and a variance from minimum 10 feet exterior side yard setback to 5 feet, in order to construct semi-detached dwellings on proposed subdivided property. The subject property is owned by Woodrow A. Barron and located on the south side of Medway Road, approximately 125 feet west of Division Avenue, Hagerstown, Maryland; and is zoned Residential Urban. The Board held a public hearing on the matter on June 13, 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 semi-detached dwelling on the subject property. This is the first such project Applicant has undertaken.
2. The subject property is a 50 foot wide vacant lot that is pending subdivision for the proposed construction. Applicant proposed to construct a 40 foot by 60 foot building, which includes two (2) 20 foot wide homes.
3. The project is part of a program that supports the Washington County Technical High School Students to assist in the construction of a home for the community. The resulting dwelling units are intended to provide workforce housing for the community.
4. The newer duplex dwelling units in the area are typically 25 feet wide on each side, while the older homes are typically 20 feet wide on each side.

5. There was no opposition presented to Applicant's 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 side and rear yard buffer requirements are twenty-five (25) feet because the subject property abuts residential property.

This property is unique because of its size and shape. The subject property is of a size that a typically sized home or duplex dwelling cannot be constructed without infringing upon the lot area and side yard setback requirements. The subject property is considerably small for its zoning designation and given the imposition of an additional fifteen (15) feet of buffer on the side and rear. "'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 Applicant has demonstrated a practical difficulty if variance relief is not granted. The proposed use of the property is permitted and is a long-standing established use of many surrounding properties. The within variance request is only

* "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).

necessary due to the limited size and shape of the property. Strict compliance would increase adverse effects emanating from the operation or prevent a permitted use to occur on a portion of the property. Likewise, strict compliance would achieve little practical benefit, as the proposed construction seeks to make positive use of an otherwise vacant and unused property. 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 a variance is hereby GRANTED by a vote of 4-0.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: July 5, 2018

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

**SMITHSBURG LITTLE SLUGGERS,
INC.**

Appeal No. AP2018-016

Applicant

OPINION

This appeal is a request for a variance from the 50 foot side yard setback on the south side of the property to 15 feet, a variance from the required paved parking area of 3,400 square feet, and a variance to increase maximum lighting intensity to 60 foot candles for renovations to a baseball field on the subject property. The subject property is located at 11735 White Hall Road, Smithsburg, Maryland, is owned by Trust/Estate of Herman A. Lewis and is zoned Agricultural Rural. The Board held a public hearing on the matter on June 13, 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 variances to renovate an existing baseball field on the subject property. Specifically, Applicant is seeking to install lighting, bleachers and batting cages to serve the baseball field and its Smithsburg Little Sluggers baseball program.

2. Applicant operates a youth baseball program which competes in the Babe Ruth Baseball League and has existed since 1965. Approximately three (3) years ago, Applicant entered into a long term lease for the subject property and invested \$80,000 to construct the existing field there. The field is situated such that home plate is located at the southwest corner of the property with first base running parallel to the southern boundary line and third base running parallel to the western boundary line.

3. Pursuant to Babe Ruth Baseball standards, Applicant is required to have lighting that is greater than 50 foot candles in intensity. These requirements are set

forth to ensure proper lighting and safety for play on the field.

4. The designated parking area for the subject property exceeds 3,400 square feet, considerably. Right now this is a grassy area that is used for teams and visitors to the baseball field.

5. There was no opposition presented to Applicant's 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 side and rear yard buffer requirements are twenty-five (25) feet because the subject property abuts residential property.

This property is unique because of its size and shape and because the field is located in the corner, close to the boundary lines. Applicant did not create the boundary lines or dimensions of the subject property, but has had to address them in renovating the baseball field. "'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).)

* "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).

The Applicant has demonstrated a practical difficulty if variance relief is not granted. With respect to the setback variance, Applicant is seeking to install bleachers along the base lines, and first base is very close to the southernmost boundary line of the property. Visitors and spectators to the property will need a place to sit and observe games; thus the bleachers are an incidental necessity to the use of the baseball field. Imposing the strict limitations of the Ordinance would result in there being no bleachers on the first base side of the field.

Applicant acknowledges that the existing parking area is under a requirement to be paved without relief from the Ordinance. However, Applicant points out that visitors already park in the grass area when the field is in use. Paving such a large area, would create significant impervious surface area, and would not be environmentally beneficial to the surrounding agricultural land. Applicant proposes to pave a limited area for handicap parking and access and leave the remainder grass. Again, it appears that there is practical difficulty created by the strict requirements of the Ordinance. Applicant has actually proposed a solution that maintains environmental integrity while also serving to provide handicap access to the baseball field.

The Ordinance limits lighting at recreational facilities to a maximum of 50 foot candles. In order to meet Babe Ruth Baseball standards, Applicant must provide lighting that is greater than 50 foot candles and thus is seeking an increase to 60 foot candles. These standards are set based on safety and play standards on baseball diamonds within the Babe Ruth organization. The installation of lighting at the subject property will allow safer use of the field for games in the evenings and also allow for improved use of the baseball field. There is great benefit to addition of lights for the field, and the foot candle restrictions create a practical difficulty without much in the way of return.

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 a variance is hereby GRANTED by a vote of 5-0.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: July 5, 2018