

**BOARD OF APPEALS**

**January 9, 2019**

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

**AGENDA**

**DOCKET NO. AP2018-033:** An appeal made by Hospice of Washington County for a variance from required 25 ft. from street right of way to 12 ft. for placement of a freestanding sign for Doey's House on property owned by Meritus Medical Center, Inc. and located at 11370 Caring Pathway Lane, Hagerstown, zoned Office, Research and Industry- **GRANTED**

**DOCKET NO. AP2018-034:** An appeal made by Matthew K. Murphy for a variance from minimum 50 ft. left side yard setback to 15 ft. for the construction of an attached mudroom and two car garage on property owned by the Appellant and located at 20023 Mill Point Road, Boonsboro, zoned Agricultural (Rural) and Residential Transition- **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 Kathy Kroboth at 240-313-2469 Voice, 240-313-2130 Voice/TDD to make arrangements no later than December 31, 2019. 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**

**HOSPICE OF WASHINGTON COUNTY**

**Appeal No. AP2018-033**

**Appellant**

**OPINION**

This appeal is a request for a variance to reduce the setback for a freestanding sign for Doey's House. The subject property is located at 11370 Caring Pathway Lane, Hagerstown, Maryland 21742; is owned by Meritus Medical Center, Inc.; and is zoned Office, Research and Industry (ORI). The Board held a public hearing on the matter on January 9, 2019.

**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 lessee and occupant of the subject property, located at 11370 Caring Pathway Lane, Hagerstown, Maryland. The subject property is currently comprised the existing Hospice of Washington County facility known as Doey's House.
2. Appellant proposes to construct a freestanding, ground mounted sign toward the front of the property, twelve (12) feet from the roadway. Appellant plans to install solar-powered lamps to illuminate the sign at night.

3. The proposed location of the sign will not block sight lines for vehicles entering or exiting the property.

4. If Meritus develops the subject property further, the sign can be moved. Appellant has permission to construct the sign at the proposed location.

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 setback requirement is 25’ for a freestanding sign, pursuant to § 22.23 of the Ordinance. Appellant seeks to reduce the setback to 6’ to locate the sign closer to the road.

“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

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\* “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).

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 facility for which the sign will serve is located well back off the road and the entrance is located near a significant dip in the roadway as you pass by the property. It is difficult for any passerby to readily identify the facility from the road, particularly if they are not familiar with the area.

The Applicant has demonstrated a practical difficulty if variance relief is not granted. While the sign could be constructed without the requested variance relief, the result would be a freestanding sign 25 feet from the roadway where it is not easily seen by passing motorists. The facility is not readily visible from the road; but is a destination location for patients and visitors. In order to announce its location and alert search motorists, it is necessary that the sign be closer to the roadway. Appellant simply seeks to bring it closer to the road so that it is easy to see and read, and so that Doey’s House is properly identified. To do so makes practical sense for the use of the property and avoids an unfair and unproductive imposition of the strict setback requirements in the Ordinance. 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 to reduce the setback for a freestanding sign to 6’ is hereby GRANTED by a vote of 4-1.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: February 5, 2019

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

**MATTHEW K. MURPHY**

**Appeal No. AP2018-034**

**Appellant**

**OPINION**

This appeal is a request for a variance to reduce the left side yard setback from fifty (50) feet to fifteen (15) feet to construct a garage and mudroom. The subject property is located at 20023 Mill Point Road, Boonsboro, Maryland 21713; is owned by Matthew K. Murphy; and is zoned RT, Residential Transition and A(R), Agricultural Rural. The Board held a public hearing on the matter on January 9, 2019.

**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 20023 Mill Point Road, Boonsboro, Maryland. The subject property currently has Appellant's residence and 23.5 of field acreage behind it.

2. Appellant's residence is turned at an angle and located right along the setback line on the left side. The sewer, water and utilities are located on the other side of the home. Appellant's "back yard" consists of numerous large rock veins and is largely

undevelopable.

3. Appellant constructed the home in 2011 and originally contemplated a garage, but opted not to for financial and planning reasons. Appellant has not made any changes to the boundaries or location of the residence thereon.

4. Appellant proposes to construct a garage and attached mudroom, to be consistent with the exterior design of the existing home. Appellant proposes that the garage be constructed on the left side of the home when facing the front, as it is the most logical and least disruptive location.

5. There are other homes in the surrounding neighborhood which have garages similar to that proposed by Appellants.

6. 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.

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\* “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).

§ 25.56(A). In the instant case, the applicable side and rear yard setback requirement is 15', respectively. 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 an odd, flag-like shape with the residential portion being narrow and the field portion expanding into the wide area. steep knoll which rises from the street up towards the home. The ground is inundated with rock and rock veins throughout the large field and even in and around the home. In addition, the septic field comprises a large portion of the front and right side yard, rendering that area undevelopable.

The Appellant has demonstrated a practical difficulty if variance relief is not granted. It appears that Appellant’s home was constructed in the only place possible on this property. In doing so, it has numerous limitations caused by the location and the condition of the property and its shape. Appellants’ home is very close to the boundary line on that side due to the septic field located on the opposite side. To the rear, they would have to contend with the rocky terrain and the illogical placement of their garage behind the home and away from the driveway. The proposed location is really the only place they can logically and structurally place the garage. There are several other properties in the immediate vicinity that enjoy the reasonable benefit of a garage and some are even detached. The relaxation of the setback requirements affords Appellant

the necessary relief and avoid the unreasonable and unfair result of limiting what is otherwise enjoyed by surrounding property owners. 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 variances to reduce the left side yard setbacks to fifteen (15) feet is hereby GRANTED by a vote of 5-0.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: February 5, 2019