

BOARD OF APPEALS

May 15, 2019

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

AGENDA

DOCKET NO. AP2019-007: An appeal made by Dallas W. Selby, Jr. for a variance from minimum 15 ft. left side yard setback to 11 ft. for construction of a two-car attached garage on property owned by the Appellant and located at 16921 Spielman Road, Fairplay, zoned Agricultural (Rural) - **GRANTED**

DOCKET NO. AP2019-008: An appeal made by Ricky L. Palmer for a variance from minimum 15 ft. left side yard setback to 9 ft. for replacement/construction of detached garage on property owned by the Appellant and located at 15445 Dellinger Road, Williamsport, zoned Agricultural (Rural) - **GRANTED**

DOCKET NO. AP2019-009: An appeal made by David G. & Michelle Hynen for a variance from minimum 100 ft. from each property line to 60 ft. rear yard, 23 ft. left side yard and 53 ft. right side yard to house chickens on property owned by the Appellant and located at 17528 Shepherdstown Pike, Sharpsburg, zoned Preservation - **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 May 6, 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**

DALLAS SELBY, JR.

Appeal No. AP2019-007

Appellant

OPINION

This appeal is a request for a variance to reduce the left side yard setback from fifteen (15) feet to eleven (11) feet to construct a garage. The subject property is located at 16921 Spielman Road, Fairplay, Maryland; is owned by Dallas Selby, Jr. (hereinafter “Appellant”); and is zoned A(R), Agricultural Rural. The Board held a public hearing on the matter on May 15, 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 16921 Spielman Road, Fairplay, Maryland. Appellant purchased the property approximately three (3) years ago.
2. The property consists of a one-level ranch style home with a partially exposed basement, approximately four (4) feet above grade in some areas. The driveway is located to the left of the home and opens to a large pad for parking next to the house. Appellant did not construct the home.

3. The driveway currently encroaches on the neighbor's property by two (2) to three (3) feet. Appellant did not construct the driveway.

4. Appellant's septic field is located to the rear of the home and runs along the center of the property.

5. The properties immediately adjoining the subject property on either side and to the rear, all have attached two-car garages.

6. Appellant proposes to construct an attached, two-car garage which would be located at the head of the current driveway, to the left of the home.

7. 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 15' however, Appellant is seeking to reduce it to 11' to construct his 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 is limited by the unfortunate location of the home, being too close to the adjoining property to reasonably construct additional improvements. The house is designed to open out in that direction, with access to the kitchen located on the left side of the home. The rear of the property is limited by the location of the septic field which occupies the meaningful building area to the rear of the home.

The Appellant has demonstrated a practical difficulty if variance relief is not granted. 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 avoids 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, the request for a variance to reduce the left side yard setbacks to eleven (11) feet is hereby GRANTED by a vote of 5–0.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: May 31, 2019

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

**RICKY L. PALMER,
Appellant**

Appeal No. AP2019-008

OPINION

This appeal is a request for a variance to reduce the left side yard setback from fifteen (15) feet to nine (9) feet to reconstruct a garage. The subject property is located at 15445 Dellinger Road, Williamsport, Maryland; is owned by Ricky L. Palmer (hereinafter “Appellant”); and is zoned A(R), Agricultural Rural. The Board held a public hearing on the matter on May 15, 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 15445 Dellinger Road, Williamsport, Maryland. Appellant purchased the property in January 2019.
2. The property consists of an old farmhouse built circa 1870, an old detached garage and a barn structure.
3. The property is an odd-shaped trapezoid-like shape, with a triangular wedge cutout about halfway along the boundary line.
4. Appellant’s septic field is located to the right side of the home as you view

the front of the residence.

5. There are other properties in the surrounding neighborhood area that have both attached and detached garages of similar size and construction as the one proposed.

6. Appellant proposes to construct a detached 24' by 32' garage building attached, two-car garage which would be located where the existing garage is, albeit closer to the property boundary line.

7. There is an existing detached garage structure which was constructed prior to the adoption of the Zoning Ordinance.

8. 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. ¹ "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 15' however, Appellant is seeking to reduce it to 9' to reconstruct his garage. The existing

¹ "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).

garage was constructed prior to the adoption of the Ordinance and is not currently subject to the setback restrictions.

“‘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 is irregularly shaped, affecting anything constructed in addition to the original home. The existing garage is turned and located close to a private road and adjoining lands and encroaches into the setback area. In between the home and the existing garage structure are underground utilities to service the home. The other side of the home is limited by the location of the septic field.

The Appellant has demonstrated a practical difficulty if variance relief is not granted. The proposed location is really the only place they can logically and structurally place the garage and happens to be the location of the existing garage which was constructed prior to the adoption of the Ordinance.² 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

² Interestingly, if Appellant were to leave the outside wall of the garage and renovate the remainder of the building, the variance relief would be unnecessary. He is only before the Board because his project is considered new construction.

of the Ordinance.

Accordingly, the request for a variance to reduce the left side yard setbacks to nine (9) feet is hereby GRANTED by a vote of 5-0.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: May 31, 2019

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

**DAVID AND MICHELLE HYNEN,
Appellants**

Appeal No. AP2019-009

OPINION

This appeal is a request for a variance to reduce the rear yard setback, left side yard setback and right side yard setback from 100 feet to 60 feet, 23 feet and 53 feet, respectively, to house chickens. The subject property is located at 17528 Shepherdstown Pike, Sharpsburg, Maryland; is owned by David and Michelle Hynen (hereinafter “Appellants”); and is zoned P, Preservation. The Board held a public hearing on the matter on May 15, 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 17528 Shepherdstown Pike, Sharpsburg, Maryland.
2. The property consists of a two-story residence which is located across what was formerly two separate lots. The interior lot line was previously vacated, leaving the house primarily on lot 13, but approximately one (1) foot onto Lot 14.
3. Appellants propose to construct a small, 16 square foot chicken coop with

an adjoining run. Appellants would only keep hens, and the primary purpose is for egg production.

4. Appellants propose to locate the chicken coop in the same location as previously contained an outdoor playset. The specific area is a level portion within the 6-7% grade from left to right.

5. Appellants shared their plans with neighbors who indicated no objection to the plans.

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. ¹ “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 requirements on all sides is 100 feet in order to house chickens as Appellants propose. Even when tacked together, the two lots are only 82 feet wide, rendering strict compliance with the Ordinance requirements

¹ “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).

impossible for the proposed use.

“‘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 is the result of two lots being joined together, thus minimizing the effect of uses or activities on surrounding properties.

Appellants have demonstrated a thorough effort in attempting to locate the chicken coop in the only real practical or logical place on the property. They have taken care to remain away from the adjacent properties and find the level area among the significant grade change in the topography. practical difficulty if variance relief is not granted. The relaxation of the setback requirements affords Appellant the necessary relief and avoid the unreasonable and unfair result of limiting what could otherwise be enjoyed elsewhere in the zoning district. 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, the requests for variances to reduce the rear yard setback from 100 feet to 60 feet, the left side yard setback from 100 feet to 23 feet and the right side yard setback from 100 feet to 53 feet are hereby GRANTED by a vote of 5–0.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: June 13, 2019