

BOARD OF APPEALS

February 19, 2020

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

AGENDA

DOCKET NO. AP2020-004: An appeal made by Arlin Halteman for a variance from 15 ft minimum right side yard setback requirement to 8 ft for proposed addition on property owned by the Appellant and located at 13902 Spickler Road, Clear Spring, Zoned Agricultural Rural . - **GRANTED**

DOCKET NO. AP2020-005: An appeal made by Stephen Showe from the Planning Commission determination to create a one lot subdivision be denied due to the private road or right of way not being contained solely within the boundaries of the original parcel of land and not serving an existing residence on the same property on property owned by the Appellant and located adjacent to 17518 Taylors Landing Road, Sharpsburg, Zoned Environmental Conservation and Rural Village.- **CONTINUED UNTIL APRIL 1, 2020 HEARING**

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 Heather Capezuto at 240-313-2462 Voice, 240-313-2130 Voice/TDD no later than February 17, 2020. 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**

ARLIN HALTEMAN

Appeal No. AP2020-004

Appellant

OPINION

Arlin Halteman (hereinafter "Appellant") requests a variance to reduce the side yard setback from fifteen (15) feet to eight (8) feet for a proposed addition to the residence at the subject property. The subject property is located at 13902 Spickler Road, Clear Spring, Maryland; is owned by the Appellant; and is zoned Agricultural Rural A(R). The Board held a public hearing on the matter on February 19, 2020.

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. Applicant is the owner of improved, residential property located at 13902 Spickler Road, Clear Spring, Maryland. The property is zoned Agricultural Rural A(R).
2. The subject property consists of a Cape Cod style residence with a garage to the left and septic area and patio to the rear. Appellant has owned the property for twenty (20) years, but the construction of the residence and the boundaries pre-date his ownership.
3. The next nearest residence is approximately seventy-eight (78) feet away. Appellant's neighbor to the right does not oppose the project.

4. Appellant experiences a recurring problem with flooding, particularly in the basement area of his residence. He uses this basement area for storage and has items perched off the floor to avoid water damage.

5. Appellant has had to move items from his basement either following water damage or to avoid such damage.

6. Appellant proposes to construct an eighteen (18) by twenty-six (26) foot addition to the right of his residence to include living and storage space.

7. 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. 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).

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

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).

(such as obstructions) or other similar restrictions." *North v. St. Mary's Cnty.*, 99 Md. App. 502, 514 (1994).)

In the instant case, Appellant proposes to construct an addition to acquire storage and living space he is currently losing due to recurring flooding in his basement. Appellant testified that his basement regularly floods, leaving him to elevate items or move them out altogether, and reducing the usable area of his residence. He is unable to expand to the left of the home as there is an existing garage. Appellant testified that he considered expanding to the rear, but there is no way to aesthetically engineer an addition to his Cape Cod style home. Thus, he was forced to expand to the right of the residence.

Even with the proposed addition, Appellant's residence would still be a reasonable distance from the nearest neighbor and the impact would be minimal, which is borne out in the support for this appeal. The Board is convinced that Appellant's strict compliance with the side yard setback requirements would unjustly limit his ability to expand and create undue hardship because he is otherwise unable to use the basement of his home. Appellant has proposed this project as a way to reclaim use of that space and therefore be restored to the benefit and use that other property owners in the surrounding neighborhood are normally afforded. Appellant's request is consistent with the intent and spirit of the Zoning Ordinance.

Accordingly, by a unanimous vote of 5-0, the variance request to reduce the side yard setback from fifteen (15) feet to eight (8) feet for an addition at the property known as 13902 Spickler Road, Clear Spring, Maryland is GRANTED.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: March 18, 2020