

**BOARD OF APPEALS**  
**June 24, 2020 6:00 p.m.**

**AGENDA**

**DOCKET NO. AP2020-017:** An appeal made by Michael & Victoria Bender for a variance from the 40 ft. minimum front yard setback to 28 ft. for the construction of addition to dwelling on property owned by the Appellant and located at 15920 Drury Lane, Williamsport, zoned Residential, Suburban. - **GRANTED**

**DOCKET NO. AP2020-018:** An appeal made by Brian Grove for a special exception and a variance from required 40,000 sq. ft. minimum lot size to 30,275 sq. ft. to establish a second dwelling unit on parcel currently improved with a dwelling on property owned by the Appellant and located at 11518 Dam Number 5 Road, Clear Spring, zoned Rural Village. - **GRANTED WITH CONDITION**

**DOCKET NO. AP2020-019:** An appeal made by Brian Starliper for a variance from the 20 ft. minimum front yard setback to 2 ft. for the construction of 30'X 30' detached garage on property owned by the Appellant and located at 17822 Virginia Avenue, Hagerstown, zoned Residential, Urban. - **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 Kathryn Rathvon at 240-313-2464 Voice, 240-313-2130 Voice/TDD no later than June 15, 2020. Any person desiring a stenographic transcript shall be responsible for supplying a competent stenographer.

Due to government regulations during the COVID-19 restriction, all hearing will take place virtually. Only the board members and the appellant(s) can appear in-person for the hearing. The general public will not be allowed to attend hearings until further notice. The general public who wish to give testimony towards a case is **strongly encouraged to do so by writing a letter or by sending an email to the following:**

Ashley Holloway, Zoning Administrator  
80 W Baltimore St  
Hagerstown, MD 21740  
aholloway@washco-md.net

All letters and emails will be read during the hearing and placed on file as an official record of the case. If you would rather give a voice testimony and/or listen to the hearing, you can do so by teleconferencing. Using a phone, you can dial in at the scheduled time of the hearing to (301) 715-8592. When prompted use meeting ID code **936-5340-6468** and meeting password **185254**. You also have the option to participate via live video or watch the hearing live. Using a computer or smart phone, go online to [www.zoom.us](http://www.zoom.us) and use the same meeting ID number and meeting password to access the hearing. Again, you are strongly encouraged to submit your testimony by letter or email.

The Board of Zoning Appeals reserves the right to vary the order in which the cases are called. 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.

Paul Fulk, Chairman  
Board of Zoning Appeals

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

**MICHAEL AND VICTORIA BENDER**  
**Appellants**

**Appeal No.: AP2020-017**

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**OPINION**

Michael and Victoria Bender (hereinafter “Appellants”) requests a variance to reduce the front yard setback from forty (40) feet to twenty-eight (28) feet to construct an addition to their home at the subject property. The subject property is located at 15920 Drury Lane, Williamsport, Maryland 21795; is owned by the Appellants; and is zoned Residential, Suburban, RS. The Board held a public hearing on the matter on June 24, 2020.<sup>1</sup>

**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 owns and resides at the subject property located at 15920 Drury Lane, Williamsport, Maryland. The property is zoned RS, Residential Suburban and consists of a residence. The subject property is the only residence on Drury Lane.

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<sup>1</sup> Due to the COVID-19 pandemic, in-person access and contact for public hearings has been limited, especially in County buildings. The members of the Board of Appeals, counsel, staff, and the Appellant were the only persons physically in attendance for the hearing. All other witnesses and the public at large were permitted to participate by telephone/video. All notices for the hearing provided the information necessary to call in and/or participate remotely and those who wished to participate were encouraged to make written submissions as well.

2. The subject property has been in Appellants' family for approximately 100 years. The existing residence was completed in 1941 and currently sits 38 feet from the front yard property line.

3. The subject property is served by public water but has a septic system.

4. There are multiple homes in the immediate surrounding area that were constructed in 1878, 1879 and 1932, prior to the enactment of the Zoning Ordinance.

5. Appellants propose to construct an addition, enlarging the existing 6 foot by 20-foot sunroom into a 16 foot by 20-foot living room area.

6. The subject property is a place where Appellants' large family tends to gather for holidays, special occasions, and family events. The family is too large for the small existing sunroom area.

7. The rear of the home has a back porch through which Appellants access their basement. They are unable to expand the footprint of the home to the rear.

8. The opposite side of the home contains the garage and then a significant drop in grade.

9. 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>2</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)

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<sup>2</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).

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

In the instant case, the subject property was constructed prior to the enactment of the Zoning Ordinance and now is unreasonably restricted by the setback requirements. Prior to 2006, Appellants could have declared their front yard to be the side of the property which faces Drury Lane, which also happens to be the front of their home. However, the Ordinance was changed, resulting in the side of the home, which is closest to Honeyfield Road, becoming the front yard. Moreover, the lack of public sewer to go with the existing public water service, imposes the 40-foot setback on the subject property.

Appellants seek a variance in order to construct an addition that will enlarge their living room area to accommodate their large family. This is a reasonable purpose that most any homeowner would expect to achieve. However, if Appellants were to conform to the existing setback requirements, their house would already be out of compliance because it is situated approximately 38 feet from the property line. In addition, Appellants would be forced to conform in a manner that is not required of the

surrounding properties. Such conformance is unnecessarily burdensome, practically difficult and would otherwise frustrate the spirit and intent of the Ordinance.

Appellants have explored other options to expand their living space. The other side of the house has the garage and it is not practical or logical to expand there. The rear of the home contains a patio, fenced dog area and back porch. Appellants' only access to their basement is through a door on the back porch, making an addition in that area impossible. Appellants have chosen the most practical and the only feasible area of the home to locate the addition. It is the minimum necessary for the proposed construction and it is not self-created. The spirit and intent of the Ordinance is perpetuated by grant the relief necessary for this project to be completed.

Accordingly, the request for a variance to reduce the front yard setback from forty (40) feet to twenty-eight (28) feet to construct an addition at the subject property is hereby GRANTED, by a vote of 5-0. The application is granted upon the condition that the proposed use be consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: July 22, 2020

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

**BRIAN GROVE**

**Appellant**

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**Appeal No.: AP2020-018**

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**OPINION**

Brian Grove (hereinafter collectively “Appellant”) requests a special exception to establish a second dwelling unit on land currently improved with a dwelling, and a variance to reduce the required minimum lot size from 40,000 square feet to 30,275 square feet at the subject property. The subject property is located at 11518 Dam 5 Road, Clear Spring, Maryland 21722; is owned by Appellant; and is zoned Rural Village, RV. The Board held a public hearing on the matter on June 24, 2020.<sup>1</sup>

**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 11518 Dam 5 Road, Clear Spring, Maryland. The subject property is zoned Rural Village, RV.
2. The subject property consists of an old dwelling, in need of significant

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<sup>1</sup> Due to the COVID-19 pandemic, in-person access and contact for public hearings has been limited, especially in County buildings. The members of the Board of Appeals, counsel, staff, and the Appellant were the only persons physically in attendance for the hearing. All other witnesses and the public at large were permitted to participate by telephone/video. All notices for the hearing provided the information necessary to call in and/or participate remotely and those who wished to participate were encouraged to make written submissions as well.

repair and renovation.

3. The subject property was reportedly used to serve the railroad in the past, with the dwelling serving as a store and a post office.

4. In the 1960s, the dwelling was converted into a home and by the early 1970s, it was used as apartments.

5. Appellant and his brother grew up in the existing dwelling.

6. Appellant currently uses the existing dwelling as his home.

7. In 1986, a well was dug to serve the adjoining properties and the lot lines were redrawn to include the well on the subject property.

8. The property is adjacent to the railroad property and is served by a driveway that crosses the railroad property.

9. Appellant proposes to live in the existing dwelling while he constructs a new home on the subject property. Once complete, Appellant would look to repurpose the existing home.

10. There was no opposition presented to this appeal.

### **Rationale**

#### ***Special Exception Request***

The Board has authority to grant a special exception pursuant to Section 25.2(b) of the Zoning Ordinance for Washington County, Maryland. A special exception is defined as “a grant of a specific use that would not be appropriate generally or without restriction; and shall be based upon a finding that the use conforms to the plan and is compatible with the existing neighborhood.” Article 28A. Moreover, the Board must consider whether there are any “adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.”

*Schultz v. Pritts*, 291 Md. 1, 15 (1981).

In the instant case, Appellant is seeking permission to have two (2) dwellings on the property so that he can construct a new residence while living in the existing house. Appellant intends to occupy the new home once complete and to repurpose the existing residence which needs significant repairs. While the Board is mindful and hesitant to create any precedent for this situation, Appellant's circumstances tend to warrant granting the special exception. There are no adverse impacts to the surrounding properties and Appellant is amenable to limiting use of the existing dwelling after construction is complete. The Board finds that the special exception should be granted, but that conditions should be imposed to avoid having both dwellings used as principle residences.

#### *Variance Request*

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56. <sup>2</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 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.

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<sup>2</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).

“‘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, Appellant seeks a relaxation of the density requirements for residential lots in the zoning district. The subject property is oddly shaped, and the boundary lines were adjusted approximately 30 years ago to include a well that had been dug. The existing home would not and does not, comply with any current setback requirements in the Ordinance. Appellant’s request is a way to bring the property into better compliance, albeit with a second dwelling on a small lot. To comply with the minimum lot size measurements would be unduly burdensome because it would require Appellant to renovate the existing home, leaving him nowhere to live. He also would not be able to comply with current setbacks and dimensional requirements because of the location of the existing dwelling. The variance relief affords Appellant the practical ability to build a residence that conforms to modern standards. So long as there are conditions imposed on the use of the existing dwelling following construction, the Board finds that the variance relief should be granted.

Accordingly, the request for a special exception to establish a second dwelling unit on land currently improved with a dwelling at the subject property is hereby GRANTED, by a vote of 5-0. The variance to reduce the minimum lot size from 40,000 square feet to 30,275 square feet at the subject property is hereby GRANTED, by a vote of 5-0. Both the special exception and the variance relief are granted upon the condition that only one (1) dwelling may be used as a principle residence at any given time. This condition shall not

otherwise limit or restrict the non-principle residence dwelling from being used consistent with the provisions of the Zoning Ordinance. Furthermore, the special exception and the variance relief are granted upon the condition that the proposed use be consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: July 22, 2020

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

**BRIAN STARLIPER**  
**Appellant**

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**Appeal No.: AP2020-019**

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**OPINION**

Brian Starliper (hereinafter “Appellant”) requests a variance to reduce the front yard setback from twenty (20) feet to two (2) feet to construct a detached garage at the subject property. The subject property is located at 17822 Virginia Avenue, Hagerstown, Maryland 21740; is owned by the Appellant; and is zoned Residential, Urban, RU. The Board held a public hearing on the matter on June 24, 2020.<sup>1</sup>

**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 owns and resides at the subject property located at 17822 Virginia Avenue, Hagerstown, Maryland. The property is zoned RU, Residential Urban and consists of a residence and a detached garage to the rear, situated along an alley.
2. The subject property is situated on the corner of Virginia Avenue and

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<sup>1</sup> Due to the COVID-19 pandemic, in-person access and contact for public hearings has been limited, especially in County buildings. The members of the Board of Appeals, counsel, staff, and the Appellant were the only persons physically in attendance for the hearing. All other witnesses and the public at large were permitted to participate by telephone/video. All notices for the hearing provided the information necessary to call in and/or participate remotely and those who wished to participate were encouraged to make written submissions as well.

Linwood Avenue. Appellant's home was constructed in 1924 and he has owned the subject property for approximately two (2) years.

3. The surrounding neighborhood consists of several residences, apartments, and commercial uses across the street.

4. There is an existing 1-car garage to the rear of the residence, situated along the alley which is Appellant's only off-street parking. The garage is in severe disrepair and needs to be torn down and rebuilt.

5. Appellant proposes to construct a 30 by 30 square foot detached garage with two (2) bays and a large access door that opens to the back yard. This garage would be located approximately 11  $\frac{3}{4}$  feet from Linwood Avenue and 10 feet from the alley.

6. According to the survey pins located by Appellant, the subject property does not encompass the sidewalk along Linwood Avenue.

7. Appellant's neighbor has a three (3) bay detached garage, measuring approximately 36 by 24 square feet.

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>2</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

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<sup>2</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).

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

In the instant case, the subject property is bounded on two (2) sides by streets, resulting in two (2) front yards and two (2) side yards. Despite that fact that it is clearly the side yard of the subject property along Linwood Avenue, it is nevertheless bound by the front yard setback requirements. This presents a practical difficulty that other properties in the surrounding neighborhood do not have to endure. There are other properties, including Appellant’s neighbor, who enjoy the benefit of having a multi-bay detached garage. Appellant seeks to improve the existing conditions by replacing the crumbling garage on his property. Having a front yard setback on the side of the property completely frustrates reasonable improvement to the property, including the existing garage. Appellant’s request is the minimum necessary for the proposed construction and it is not self-created. The spirit and intent of the Ordinance is perpetuated by grant the relief necessary for this project to be completed.

Accordingly, the request for a variance to reduce the front yard setback from twenty (20) feet to two (2) feet to construct a detached garage at the subject property is hereby GRANTED, by a vote of 5-0. The application is granted upon the condition that

the proposed use be consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: July 22, 2020