

BOARD OF APPEALS

April 28, 2021

AGENDA

DOCKET NO. AP2021-009: An appeal was made by Christopher Brandon Ivera for a variance from the minimum 20 ft. front yard setback to 16.3 ft. for expansion of existing attached garage and a variance from the minimum 20 ft. front yard setback to 11.5 ft. for future construction of roof over existing front porch pad on property owned by the Appellants and located at 9722 Harpsburg Pike,agerstown, Zoned Residential Suburban. 6:00 pm **-GRANTED**

DOCKET NO. AP2021-010: An appeal was made by Paul Hodges for a variance from the minimum 15 ft. side yard setback to 10 ft. for future construction of detached garage on property owned by the Appellant and located at 6715 Dam Road, Harpsburg, Zoned Environmental Conservation. 6:55 pm - **GRANTED**

DOCKET NO. AP2021-011: An appeal was made by AB Entals C for a variance from the minimum 4 ft. side yard setback to 0 ft. for construction of deck with stairs to existing second floor apartment over detached garage on property owned by the Appellant and located at 17320 Exington Avenue,agerstown, Zoned Residential Urban. 7:15 pm - **GRANTED WITH CONDITIONS**

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 Katie Athvon at 202-313-2600 ext. 202-313-2130 ext./ DD no later than April 19, 2021. 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. No participants will be allowed to attend the hearing in person 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:**

Katie Athvon, Zoning Coordinator
100 W Baltimore St
agerstown, MD 21701
kathvon@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- 592. 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 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 Ulk, Chairman
Board of Zoning Appeals

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

CHRISTOPHER AND BRANDON RIVERA

APPEAL No. AP2021-009

APPELLANTS

* * * * *

OPINION

Christopher and Brandon Rivera (hereinafter, “Appellants”) request a variance from the minimum 20 foot front yard setback to 16.3 feet for expansion of an existing attached garage, and a variance from the minimum 20 foot front yard setback to 18.5 feet for future construction of a roof over an existing front porch pad at the subject property. The subject property is located at 9722 Sharpsburg Pike, Hagerstown, Maryland, and is zoned Residential Suburban. The Board held a public hearing on the matter on April 28, 2021.¹

The appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County, Maryland (hereinafter, “Ordinance”) and upon proper notice to the parties and general public as required.

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. Appellants own the subject property located at 9722 Sharpsburg Pike, Hagerstown, Maryland. The subject property is zoned Residential Suburban.
2. The subject property consists of approximately 11,200 square feet, improved by a single-family residential dwelling in the St. James Village subdivision.

¹ Due to the Covid-19 pandemic, in-person access and contact for public hearings has been limited, especially in County buildings. In December 2020, the County transitioned to conducting quasi-judicial hearings exclusively by remote virtual hearing. All participants and witnesses, including the Board members and County staff appeared via Zoom® videoconferencing, 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.

3. Appellants purchased the subject property at a foreclosure sale and began making some improvements to the dwelling without a permit, resulting in a citation by the City of Hagerstown Construction Department. Appellants subsequently applied for and received the proper permits.

4. Appellants are proposing additional improvements to the dwelling which were not included in the original scope of work, but which require variances to the front yard setback requirements as set forth in the Ordinance for property in the RS zoning district.

5. The existing layout of the dwelling and interior improvements needed to enable code-compliant access to the lower level of the dwelling, required Appellants to utilize several feet of the existing area of the garage. As a result, Appellants propose extending the length of the garage to accommodate passenger vehicles of typical length.

6. Appellants propose to build an “A-frame” style roof above the existing concrete front door porch to provide cover from the elements and a more aesthetic appearance to the front entry. The porch roof will tie-in to the existing main roof and be supported via vertical posts resting on the porch pad. There will be no changes to the current dimensions of the porch pad, and the porch roof will not extend beyond those current dimensions.

7. All (or nearly all) of the homes on Sharpsburg Pike in the immediate vicinity have garages and front porches in a similar location and of similar design to that which the Appellants propose for the subject property.

8. Appellants have been advised that if the variances sought in this appeal are granted, Appellants will be required to file for a formal revision of the construction permit(s) currently issued.

RATIONALE

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship (Ordinance §§25.2(c) and 25.56).² “Practical difficulty” may

² “When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive (“or”), Maryland court 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).

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 variances 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 (Ordinance §25.56(A)).

“Undue hardship” may be found when: (1) strict compliance with the Ordinance would prevent the applicant from securing a reasonable return from or to make reasonable use of the property; and (2) the difficulties or hardships are peculiar to the property and contrast with those of other property owners in the same district; and (3) The hardship is not the result of the applicant’s own actions (Ordinance §25.56(B)).

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 this case, the Appellants did not specify, but presented their case in a manner that implicates the criteria for both practical difficulty and undue hardship. In such a case, the Board need find only that Appellants made a showing that satisfies the criteria for either standard.

Appellants have requested a variance to allow construction which will expand the length of an existing attached garage, to allow for enclosed parking of passenger vehicles of typical length, as other similarly situated properties in the vicinity of the subject property enjoy. This extension is necessary due to reconfiguration of certain interior elements of the dwelling to allow for adequate and code-compliant access to the lower-level of the dwelling. If Appellants were required to keep the garage at its present length or allowed to extend the garage at a lesser distance than that requested, the garage would not be adequate for parking of standard length passenger vehicles.

Appellants have also requested a variance to allow future construction of a roof over an existing porch pad; such roof features are present on numerous similarly situated properties in the vicinity of the subject property. Appellants testified that the roof will not extend beyond the dimensions of the existing porch pad and will be integrated into the main roof in an aesthetically similar manner.

The Board finds that for both variances requested in this case, requiring strict compliance would unreasonably prevent the use of the property for a permitted purpose as enjoyed by other similarly situated properties, would do substantial injustice to Applicants, and a lesser relaxation that that applied for would not give substantial relief, resulting in a practical difficulty for which relief should be afforded. The Board further finds that granting the variances would observe the spirit of the Ordinance and secure public safety and welfare.

Therefore, Appellants' request for a variance from the minimum 20 foot front yard setback to 16.3 feet for expansion of an existing attached garage, and a variance from the minimum 20 foot front yard setback to 18.5 feet for future construction of a roof over an existing front porch pad at the subject property is GRANTED, by a vote of 5-0. Said variances are granted upon the conditions that the proposed construction be consistent with the testimony and evidence presented herein, and that Appellants will file for a formal revision of the current building permit to encompass the proposed construction.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: May 26, 2021

Notice of Appeal Rights

Any person or persons, jointly or severally, aggrieved by any decision of the Board of Appeals, or any taxpayer, or any officer, department, board, or bureau of the jurisdiction, may appeal the same to the Circuit Court for Washington County within thirty (30) days, in a manner set forth in Md. Code Ann., Land Use, § 4-401.

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

PAUL RHODES

APPEAL No. AP2021-010

APPELLANT

* * * * *

OPINION

Paul Rhodes (hereinafter, “Appellant”) requests a variance from the minimum 15 foot side yard setback to 10 feet for construction of a future detached garage along the rear boundary line of the subject property.¹ The subject property is located at 6715 Dam Number 4 Road, Sharpsburg, Maryland, and is zoned Environmental Conservation (EC). The Board held a public hearing on the matter on April 28, 2021.²

The appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County, Maryland (hereinafter, “Ordinance”) and upon proper notice to the parties and general public as required.

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 the subject property located at 6715 Dam Number 4 Road, Sharpsburg, Maryland. The subject property is zoned Environmental Conservation.
2. The subject property consists of approximately one acre, improved by a

¹ Accessory structures in a zoning district where single-family dwellings are permitted “shall not be closer to...rear lot line than the side yard requirements for a single-family...dwelling in that district” (Ordinance §4.10(b)(5)). In the EC district, the side yard setback requirement is 15 feet (Ordinance §5B.5).

² Due to the Covid-19 pandemic, in-person access and contact for public hearings has been limited, especially in County buildings. In December 2020, the County transitioned to conducting quasi-judicial hearings exclusively by remote virtual hearing. All participants and witnesses, including the Board members and County staff appeared via Zoom® videoconferencing, 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.

single-family residential dwelling, a macadam driveway, several detached structures, and a concrete slab, all of which were present when Appellant purchased the property.

3. Appellant is proposing to construct a 25' x 26' detached garage along the rear boundary line of the subject property, between an existing macadam driveway and concrete slab in the northeast corner of the property, and an existing building and shed in the southeast corner of the the property.

4. Appellant is proposing to build the garage 10 feet from the rear boundary line instead of the required 15 feet, which will increase the distance between the northwest corner of the proposed garage and the nearest curved edge of the macadam driveway from 3 feet to 6 feet, thereby allowing for more room to maneuver when backing out or turning vehicles on the macadam parking area behind the dwelling, and decreasing the likelihood of a collision with the northwest corner of the proposed garage.

5. The topography of the subject property (steep hill in front half of property) and the location of the aforementioned and other existing improvements thereon significantly limit where Appellant can construct the proposed garage.

6. There is a dense mature tree-line approximately 75 feet deep along the rear boundary, effectively screening the rear of the subject property from the view of the most affected adjoining property (to the southeast).

RATIONALE

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship (Ordinance §§25.2(c) and 25.56).³ "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 variances 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 (Ordinance §25.56(A)).

³ "When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive ("or"), Maryland court 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).

“Undue hardship” may be found when: (1) strict compliance with the Ordinance would prevent the applicant from securing a reasonable return from or to make reasonable use of the property; and (2) the difficulties or hardships are peculiar to the property and contrast with those of other property owners in the same district; and (3) the hardship is not the result of the applicant’s own actions (Ordinance §25.56(B)).

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 this case, the Appellant did not specify, but presented his case in a manner that implicates the criteria for both practical difficulty and undue hardship. In such a case, the Board need find only that Appellant made a showing that satisfies the criteria for either standard.

Appellant has requested a variance to allow construction of a future detached garage, the rear of which structure is proposed to be ten (10) feet from the rear boundary line. Appellant testified that the variance will allow better clearance for maneuvering vehicles in the parking area on the macadam behind the dwelling and will also lessen the probability for a collision into the proposed garage. Appellant further testified that other potential locations on the subject property for the garage are not feasible due to the placement of other existing structures, topography that will not provide for a properly level foundation, and/or such locations would compromise other setback requirements. Appellant testified that the areal dimensions of the proposed garage are the minimum necessary for him to house two vehicles, to attach typical garage fixtures therein, and to store other items which he would prefer not remain exposed to the elements, all while still being able to move around the vehicles with relative ease.

The Board finds that based on the testimony given and evidence received, the unique conditions of the subject property are peculiar to the property and contrast

with those of other property owners in the same district. In addition, the Board finds that those unique conditions have created significant limitations as to where the proposed garage can be placed, and the area chosen by Appellant appears to be the only area that will avoid those limitations. The Board further finds that strict compliance with the Ordinance would unreasonably prevent applicant from making reasonable use of the property, and that the hardship is not the result of the Appellant's own actions.

For these reasons, the Board finds that Appellant has satisfactorily made a showing of an undue hardship for which relief should be afforded. Therefore, Appellant's request for a variance from the minimum 15 foot side yard setback to 10 feet for future construction of a 25' x 26' detached garage on the subject property is GRANTED, by a vote of 5-0. Said variance is granted upon the condition that the proposed construction be consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: May 28, 2021

Notice of Appeal Rights

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

RAB RENTALS LLC

APPELLANT

APPEAL No. AP2021-011

* * * * *

OPINION

RAB Rentals LLC (hereinafter, “Appellant”) requests a variance from the minimum 8 foot side yard setback to 4 feet for construction of a future deck with stairs to the existing second-floor apartment over an existing detached garage. The subject property is located at 17320 Lexington Avenue, Hagerstown, Maryland, and is zoned Residential, Urban District. The Board held a public hearing on the matter on April 28, 2021.¹

The appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County, Maryland (hereinafter, “Ordinance”) and upon proper notice to the parties and general public as required.

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 the subject property located at 17320 Lexington Avenue, Hagerstown, Maryland. The subject property is zoned Residential, Urban District.
2. The subject property consists of approximately 0.672 acres, improved by a two-story residential dwelling, and a detached garage with a second-floor apartment, all of which were present when Appellant purchased the property.

¹ Due to the Covid-19 pandemic, in-person access and contact for public hearings has been limited, especially in County buildings. In December 2020, the County transitioned to conducting quasi-judicial hearings exclusively by remote virtual hearing. All participants and witnesses, including the Board members and County staff appeared via Zoom® videoconferencing, 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.

3. Appellant is proposing to construct an approximately 16' long by 9' wide second-floor deck and stairs to reach the deck, said deck and stairs to be located at the rear of the detached garage, which opposes the northernmost side yard boundary line. An existing 9 foot wide concrete slab runs along the rear of the garage, but does not span the entire width of the garage, due to the location of the chimney at the rear northeast corner of the garage.

4. Appellant is proposing to build the second-floor deck and stairs to it in a manner that will place the westernmost end of the deck 4 feet from the side boundary line instead of the required 8 feet (Ordinance §9.5(a)), to allow easier and safer maintenance of the rear roof, chimney, and gutter/down-spouting, and to be able to provide a second means of egress from the second-floor apartment.

5. The topography of the subject property (steep slope from rear of detached garage to the side yard property line and very soft soil) makes it nearly impossible to safely place ladders or hydraulic lifts to reach the second-floor and roof of the garage.

6. Appellant currently owns the properties on either side of the subject property, which includes the property to the North, which would be most-affected by the requested variance.

RATIONALE

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship (Ordinance §§25.2(c) and 25.56).² "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 variances 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 (Ordinance §25.56(A)).

"Undue hardship" may be found when: (1) strict compliance with the Ordinance would prevent the applicant from securing a reasonable return from or to make

² "When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive ("or"), Maryland court 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).

reasonable use of the property; and (2) the difficulties or hardships are peculiar to the property and contrast with those of other property owners in the same district; and (3) the hardship is not the result of the applicant's own actions (Ordinance §25.56(B)).

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 this appeal, Appellant's owners, Richard Bruner and Anjonette Bruner, testified that they believe the facts implicate the criteria for both practical difficulty and undue hardship. In such a case, the Board need find only that Appellant made a showing that satisfies the criteria for either standard.

Appellant has requested a variance to allow construction of a future second-floor deck and stairs to it along the rear of a detached garage on the subject property, with the northeast end of the deck proposed to be 4 feet from the side yard boundary.

The Bruners testified that that they are unable to properly maintain the detached garage due to the severe slope behind the garage, which makes it difficult and hazardous to place ladders or a hydraulic lift to reach the rear of the second-floor level and roof, and the variance will allow the deck and stairs to be placed in a manner that will facilitate easier and safer maintenance of the rear roof, chimney, and gutter/downspouting.

The Bruners further testified that the future deck and stairs will provide a second means of egress from the second-floor apartment, and that they plan to replace the existing window at the deck level with an exterior door to make it easier and safer for the second-floor tenant to get to the deck and stairs, both for safety and recreation.

The Board finds that based on the testimony given and evidence received, the unique conditions of the subject property are peculiar to the property and contrast with those of other property owners in the same district. In addition, the Board finds that those unique conditions have created significant and hazardous limitations for

maintenance of the detached garage and particularly for safe egress of the second-floor tenant in case of an emergency, and that construction of the deck and stairs in the proposed location provides the best way to overcome those limitations. The Board further finds that strict compliance with the Ordinance would unreasonably prevent applicant from making reasonable use of the property, and that the hardship is not the result of the Appellant's own actions.

For these reasons, the Board finds that Appellant has satisfactorily made a showing of an undue hardship for which relief should be afforded. Therefore, Appellant's request for a variance from the minimum 8 foot side yard setback to 4 feet for future construction of an approximately 16' long x 9' wide second-floor deck and stairs to reach it, at the rear of the existing detached garage on the subject property, is GRANTED, by a vote of 5-0. Said variance is granted upon the conditions that: (1) the proposed construction shall be consistent with the testimony and evidence presented herein; (2) the existing window to the second-floor apartment at the deck level shall be replaced with a code-compliant exterior door to provide safer egress to the deck; and (3) and that the deck and the stairs to it shall not be enclosed unless the enclosure meets the fire-resistant ratings of the International Residential Code adopted and in effect in Washington County, Maryland at the time of enclosure.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: May 28, 2021

Notice of Appeal Rights

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