

BOARD OF APPEALS

June 23, 2021

AGENDA

DOCKET NO. AP2021-016: An appeal was made by Donna Ford for a variance from the minimum 50 ft. side yard setback to 48.9 ft. for placement of mobile home on residential use lot contiguous to parcel designated as priority agricultural preservation area on property owned by the Appellant and located at 20201 Lloyd Ashton Way, Boonsboro, Zoned Agricultural (Rural). 6:00 pm

DOCKET NO. AP2021-017: An appeal was made by Eric Passarell for a variance from the 100 ft. minimum setback from all property lines for animal husbandry structures, building A: reduce to 21 ft. from the rear property line, 0 ft. from right side yard, 45 ft. from left side yard, Building B: reduce to 31 ft. from rear property line, 40 ft. from right side yard, 3 ft. from left side yard on property owned by Lynnette Passarell and located at 11030 Clinton Avenue, Hagerstown, Zoned Residential (Urban). 6:45 pm

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 Rathvon at 240-313-2464 Voice, 240-313-2130 Voice/TDD no later than June 14, 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 Rathvon, Zoning Coordinator
80 W Baltimore St
Hagerstown, MD 21740
krathvon@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 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**

DONNA FORD

APPEAL No. AP2021-016

APPELLANT

* * * * *

OPINION

Donna Ford (hereinafter, "Appellant") requests a variance from the required minimum 50 foot side yard setback (Ordinance §5A.7(5)) to 48.9 feet for an existing mobile home on the subject property. The subject property is located at 20201 Lloyd Ashton Way, Boonsboro, Maryland, and is zoned Agricultural (Rural). The Board held a public hearing on the matter on June 23, 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 is an owner of the subject property located at 20201 Lloyd Ashton Way, Boonsboro, Maryland. The subject property is zoned Agricultural (Rural) (A(R)).
2. The subject property is a "panhandle" lot in a five-lot subdivision, and for the most part is surrounded by lands subject to agricultural preservation easements within a State of Maryland program.

¹ Due to the Covid-19 pandemic, in-person access and contact for public hearings has been limited, especially in County buildings. On or about June 14, 2021, the County reopened County buildings to the public. However, since the newspaper advertisements and mailed notices for the June 23, 2021 hearings were sent prior to then, the County retained the option for participants and witnesses to appear via Zoom® videoconferencing, and the public at large 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 and other family members own the adjacent 42.5 acres to the North of the subject property, and the adjacent 124.5 acres to the South of the subject property, all subject to the aforesaid agricultural preservation easements.

4. Residential lots in the A(R) zoning district require a 50 foot side yard setback.

5. A mobile home was placed on and anchored to the subject property by a contractor, in a location marked off by a contractor.

6. After placement, a survey revealed that the southeastern-most corner of the mobile home was placed beyond the side yard setback by approximately 13 inches.

7. The mobile home is situated several hundred feet away from the most affected neighbor.

8. Appellant is seeking the variance to avoid having to remove the mobile home anchors and move the mobile home 13 inches to the 50 foot setback line.

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 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)).

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).

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, Appellant testified that the circumstances present an undue hardship on Appellant if the mobile home is not allowed to remain in its current location. Appellant further testified that she relied on the expertise of contractors who were aware of the setback requirements, but through their negligence, placed the mobile home in a manner that violated the setback requirement. Appellant and her family own significant acreage surrounding the subject property, nearly all of which they placed into a State-managed perpetual agricultural preservation easement program. Moreover, Appellant testified that the benefit of compliance would be far outweighed by the significant cost to move the mobile home 13 inches, particularly when the most affected property owner would not be able to notice such a small difference in distance.

The Board finds that for the variance requested in this case, the good-faith reliance by Appellant on the contractors tasked with placement of the mobile home, the distance of the mobile home from the most affected neighbor, the *de minimis* benefit that would be achieved by compliance weighed against the significant cost of compliance, and the fact that nearly all the acreage surrounding the subject property are prohibited from further development, all combine to place an undue hardship on Appellant if the Ordinance were strictly enforced. Strict compliance would prevent Appellant from making a reasonable use of the subject property, the difficulties or hardships identified and testified to by Appellant are peculiar to the subject property and contrast with those of other property owners in the same district, and the hardship is not the result of Appellant’s own actions.

Therefore, Appellant’s request for a variance from the minimum 50 foot side yard set back to 48.9 feet on the subject property is GRANTED, by a vote of 5-0. Said

variance is granted upon the condition that the current and future placement of the mobile home does not encroach further beyond the side yard setback line at issue from the testimony and evidence presented herein.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: June 23, 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**

ERIC PASSARELL

APPEAL No. AP2021-017

APPELLANT

* * * * *

OPINION

Eric Passarell (hereinafter, "Appellant") requests variances from the required minimum 100 foot setback for all property lines for animal husbandry structures (Ordinance §9.5(a), modified by §22.94(a)) as follows: (1) for an existing "Building A", to 21 feet from the rear property line, to 0 feet from the right side yard property line, and to 45 feet from the left side yard property line; and (2) for an existing "Building B" to 31 feet from the rear property line, to 40 feet from the right side yard property line, and to 3 feet from the left side yard property line, both located on the subject property (Building A and Building B, collectively, the "Buildings"). The subject property is located at 11030 Clinton Avenue, Hagerstown, Maryland, and is zoned Residential, Urban. The Board held a public hearing on the matter on June 23, 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, his wife, and their child(ren) are tenants of the subject

¹ Due to the Covid-19 pandemic, in-person access and contact for public hearings has been limited, especially in County buildings. On or about June 14, 2021, the County reopened County buildings to the public. However, since the newspaper advertisements and mailed notices for the June 23, 2021 hearings were sent prior to then, the County retained the option for participants and witnesses to appear via Zoom® videoconferencing, and the public at large 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.

property located at 11030 Clinton Avenue, Hagerstown, Maryland. The owner of the subject property (who is related to Appellant) authorized Appellant to seek the variances. The subject property is zoned Residential, Urban (RU).

2. A single-family dwelling is situate on the subject property, which is a roughly rectangular lot containing 8,250 square feet, which is fully fenced-in. Other single-family dwellings are located on neighboring lots on all sides of the subject property.

3. The existing Buildings were constructed on the lot by Appellant's grandfather many years ago and have concrete slab floors. Appellant has repurposed the Buildings to house chickens (hens).

4. Building B is needed occasionally to segregate sick or aggressive chickens from the other healthy, more docile chickens.

5. Appellant increased the height of an existing fence to 6 feet to accommodate a neighbor who was concerned about Appellant's dog jumping the original, smaller fence.

6. Appellant applies diatomaceous earth on the ground around the buildings and where the waste is spread to limit odors.

7. Appellant submitted letters from the Washington County Soil Conservation District and from the Washington County office of the University of Maryland Extension, demonstrating that the subject property is operating under an approved waste management plan and a nutrient management plan.

8. Appellant submitted a written letter of support for the application from the neighbors to the immediate North of the subject property.

9. The neighbor to the immediate South of the subject property submitted written testimony, wherein he stated that he did not have any objection to Appellant and his family keeping and raising chickens on the subject property, but mentioned some concerns about a previous incident where a chicken was killed by Appellant's dog. This neighbor requested that if the variance is approved, it be conditioned on Appellant installing (at his expense) a 6 foot privacy fence along the shared boundary line with the subject property.

10. Appellant is seeking the variances due to the the limited size of the lot,

and the impracticality of moving the Buildings, especially due to their concrete slab floors.

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 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, Appellant’s wife testified that the circumstances present a practical difficulty if the Building are not allowed to remain in their current locations, since the lot is not adequately sized to comply with the setback requirements of the Ordinance.

Appellant testified that the property has been in his family for three generations

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).

and that the Buildings were constructed on concrete slabs by his grandfather. Appellant's wife further testified that the buildings were repurposed to house chickens (currently numbered at 16) as part of her daughter's Girl Scout project, that they wanted to continue to house and raise chickens to have a ready supply of fresh eggs, to allow their daughter to continue to learn responsibility of caring for the chickens, that the chickens have clipped wings to prevent flight over the fencing on the subject property, they spread diatomaceous earth to prevent odors, that they were unaware of the setback requirements when they started the project, and they are willing to install a 6 foot high privacy fence along the shared boundary line to accommodate the neighbor who requested said fence.

The Board finds that for the variances requested in this case, the limited are of the subject property, the impracticality of moving the Buildings, the need for the Building B to house sick or aggressive chickens, all combine to practical difficulty on Appellant if the Ordinance were strictly enforced. The Board also found that Appellant has approved waste and nutrient management plans, and has taken appropriate action to limit the chickens from escaping the subject property and to limit odors from the manure. For these reasons, the Board finds that strict compliance would prevent Appellant from using the subject property for a permitted purpose or render conformance unnecessarily burdensome (if not impossible), a lesser relaxation that that applied for would not give substantial relief, and granting the variances will observe the spirit of the Ordinance and secure public safety and welfare.

Therefore, Appellant's request for a variance from the minimum 50 foot side yard set back to 48.9 feet on the subject property is GRANTED, by a vote of 5-0. Said variance is granted upon the conditions that (1) the maximum number of chickens Appellant and his family may keep on the subject property at any time is twenty (20); (2) Appellant, at his expense and no later than sixty days (60) of the date of this opinion, shall erect a 6 foot high privacy fence on the subject property owner's side of the shared boundary line between the subject property and the property at 11028 Clinton Avenue, Hagerstown, MD, said fence to extend along said shared boundary line from the rear boundary line to the point perpendicular to the Southwest corner of

Appellant's dwelling; and (3) that performance of the animal husbandry activities and location of the Buildings will continue to be consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: June 23, 2021

Notice of Appeal Rights

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