

BOARD OF APPEALS

October 13, 2021

County Administration Building, 100 W. Washington St., Meeting Room 2000, Hagerstown, at 6:00 p.m.

AGENDA

DOCKET NO. AP2021-030: An appeal was made by Mike Dropik for a variance from the required 20,000 sq. ft. lot area to 16,535 sq. ft., a variance from the required 25 ft setback from all property lines to 18 ft and a variance from the required 50 ft setback from street or parking lot to 18 ft to establish a “Tot Lot” on property owned by LGI Homes Maryland located at Lot 162, Roulette Drive, Claggetts Mill, Hagerstown, Zoned Residential Urban

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 October 4, 2021. 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**

MIKE DROPIK

APPEAL No. AP2021-030

APPELLANT

* * * * *

OPINION

Mike Dropik (hereinafter, "Appellant") requests a variance from the minimum 20,000 square feet lot area requirement to 16,535 square feet, a variance from the minimum 25 foot setback from all property lines to 18 feet, and a variance from the minimum 50 foot setback from a street or parking lot to 18 feet for establishment of a play lot for pre-schoolers (hereinafter, the "Tot Lot") located on the subject property. The subject property is located at Lot 162, Roulette Drive, Hagerstown, Maryland (tax account ID# 10-066564), and zoned Residential, Urban. The Board held a public hearing on the matter on October 13, 2021.

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. The subject property is located at and identified as Lot 162, Roulette Drive, Hagerstown, Maryland (tax account ID# 10-066564), is zoned Residential, Urban (R(U)), and has been owned by LGI Homes Maryland, LLC since 2019. Said owner has authorized Appellant to apply for the variances requested.

2. The subject property is a triangular lot comprised of 16,535 square feet, and is one of 100 lots in Section 2 (the final section) of the Claggetts Mill subdivision, none of which said lots have yet been developed. Construction on all lots in the first section of said subdivision was completed several years ago.

3. The subdivision project originally received approval in 2005, and in 2012, a comprehensive change in the R(U) zoning district reduced the minimum lot size for single-family dwellings from 20,000 square feet to 6,500 square feet, whereupon, the previous owner replatted the approved lots to take advantage of the smaller lot area requirement to yield more buildable lots.

4. Appellant desires to have the subject property approved for the requested variances to allow for establishment of a Tot Lot thereon. The developer (the property owner) builds homes "on spec" (i.e., before a home is sold), and although a tot lot is not required for a development of this type, it considers this Tot Lot to be an important subdivision amenity, both to enhance the community and to drive sales. If approved, the developer intends to replat the subject property for such purpose, and to complete construction of the Tot Lot prior to construction of any homes in Section 2.

5. The general requirements for lot area and setbacks for the R(U) zoning district are set forth in Section 9.5(a) of the Ordinance. Additional performance standards pertaining to a Tot Lot are set forth in Sections 4.17(c) of the Ordinance. The aforementioned lot replatting significantly reduced the number of lots in the subdivision which meet said requirements and performance standards, thus prompting the requested variances.

6. Although the subject property is undersized for current Tot Lot area and setback requirements, the subject property appears to be the most advantageous lot within the undeveloped Section 2 for the siting of the Tot Lot, as it is far away from the main road (Poffenberger Road) servicing the subdivision, close to the end of a cul-de-sac (at the terminus of Roulette Road), away from more heavily trafficked roads and the storm water management areas within Section 2, and within easy walking distance of all of the Section 2 lots (the furthest lot being only 1,800 feet distant). Moreover, the closest affected current dwelling in Section 1 is over 1,100 feet away.

7. A draft concept plan submitted by Appellant shows tree lines to be established on the Northeast and Northwest of the subject property, to provide screening of the Tot Lot from the three lots bordering the subject property on the North side of Roulette Drive. At the Board's suggestion, Appellant also agreed to install a fence of proper type and height spanning the distance between the

southernmost ends of the aforementioned tree lines (with a gate of appropriate width across the sidewalk leading from Roulette Drive to the Tot Lot), for the purpose of providing an additional barrier from traffic for children using the Tot Lot.

8. Appellant and the property owner's engineer testified in support of the application for variances and submitted two exhibits (the draft concept plan and location plan of the subject property within Section 2 of the subdivision) and other supplemental information, including sample representations of the type of playground equipment and pavilion being considered for the Tot Lot. No other persons testified or provided evidence in support of or in oppositions to the application, and nothing was received from any government agencies.

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).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 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

¹ "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).

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 property owner's surveyor and engineer, Steve Cvijanovich of Fox & Associates, Inc., testified that the circumstances (as noted by the Board in the findings of fact set forth hereinabove) present a practical difficulty if Appellant must comply strictly with the lot area and setback requirements. Mr. Cvijanovich noted the unusual shape of the subject property, the significant depths of the setback requirements, and the lack of lots more suitably located within the subdivision for use as a Tot Lot. He also presented the positive aspects of locating the Tot Lot on the subject property, such as minimizing the amount of traffic near the Tot Lot and increasing the distance away from the storm water management facilities, the relatively short distance to walk from the farthest lot in Section 2 to the Tot Lot, and the provision of the Tot Lot for use within the neighborhood where such an amenity is not required. Mr. Cvijanovich also stated that the developer agrees to provide natural screening and a barrier fence, to maintain aesthetics for adjoining property owners and to enhance the safety and security of users of the Tot Lot. Finally, he stressed that Appellant is seeking only the minimum necessary for relief, and that strict conformance with the Ordinance requirements would be unnecessarily burdensome (if not impossible).

The Board finds that for the variances requested in this case, and upon the testimony and evidence presented herein, that the uniqueness and existing limitations of the subject property, and the impracticality of requiring strict compliance with the Ordinance, all combine to result in a practical difficulty on Appellant if the Ordinance were strictly enforced. 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 variances from: (1) the minimum 20,000 square foot lot area requirement to 16,535 square feet; (2) the minimum 25 foot setback requirement from all property lines to 18 feet; and (3) the minimum 50 foot setback requirement from a street to 18 feet for the subject property are GRANTED, each by a vote of 5-0. Said variances are granted upon the conditions that the property owner and/or developer shall: (1) establish tree line screening along the Northwest and Northeast boundaries as indicated on the draft concept plan; (2) shall install a fence of proper type and height spanning the distance between the southernmost ends of the aforementioned tree lines (with a gate of appropriate width across the sidewalk leading from Roulette Drive to the Tot Lot); and (3) ensure that the Tot Lot is constructed upon the subject property in a manner consistent with the testimony and evidence presented herein and in compliance with all other applicable government regulations.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: November 12, 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.