

**BOARD OF APPEALS**

**December 1, 2021**

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

**AGENDA**

**DOCKET NO. AP2021-033:** An appeal was made by Tina Marie Leard & Galib Kawaja for a variance from the previously approved 4 ft. variance for the right-side yard setback to 3.6 ft. for constructed foundation of an addition to the single family dwelling on property owned by the appellants and located at 12051 Belvedere Road, Hagerstown, Zoned Residential Suburban. - **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 Katie Rathvon at 240-313-2464 Voice, 240-313-2130 Voice/TDD no later than November 22, 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**

**TINA MARIE LEARD**

**APPELLANT**

**APPEAL No. AP2021-033**

**OPINION**

Tina Marie Leard (hereinafter, "Appellant") requests a variance from the previously granted 4 foot right side yard setback to 3.6 feet for construction of an addition<sup>1</sup> to a single-family dwelling located on the subject property (Ordinance §8.5(a)). The subject property is located at 12051 Belvedere Road, Hagerstown, Maryland, and is zoned Residential, Suburban. The Board held a public hearing on the matter on December 1, 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. Appellant, together with a joint tenant, is an owner of the subject property located at 12051 Belvedere Road, Hagerstown, Maryland, and was acquired in January 2013. The subject property is zoned Residential, Suburban (RS).
2. The subject property is an nearly rectangular-shaped lot containing 0.26 acres, with similarly sized lots and homes to the East, West, and South.
3. A foundation slab for a previously existing carport was poured many years prior to Appellant's purchase of the subject property. However, at some time

<sup>1</sup> A previous owner of the subject property applied for and was granted a variance to 4 feet from the required minimum right side yard setback of 8 feet (see AP2004-112) for the construction of a dining room addition to the rear of an existing carport (among other changes). The carport and its foundation slab were considered to be a non-conforming use that was grandfathered. In 2011, said previous owner abandoned said construction, the permits expired, and the property was foreclosed upon and purchased by another previous owner.

point in time, the carport and its foundation were removed, and a new slab foundation was poured.

4. Appellant desires to construct a new addition upon the new foundation location on the South side of the dwelling, to include a home office, laundry, and half bathroom.<sup>2</sup>

5. An adjoining neighbor contacted the County about construction being performed without permits at the subject property. An inspection by the County noted that permits for the current construction were if fact needed, upon which Appellant and her contractor applied for said permits.

6. During review of the permit application with the contractor, County staff determined that the new foundation upon which the addition is proposed to be constructed is at its closest 3.7 feet from the right side property line, thus necessitating a variance from the original 4 foot right side yard variance granted in AP2004-112.

7. Appellant and her contractor presented copies of the proposed plans for the addition, along with a foundation location survey. The Board also reviewed and considered photographs and website images of the subject property provided by County staff, showing the changes to the property 2005 up to the inspection conducted in November 2021. Finally, the Board read and considered an email from the County's Chief Plans Examiner/Deputy Code Official regarding the fire ratings and related construction material and design requirements.

8. The most-affected property owner (Ronald Mertz) is the adjoining neighbor to the South at 12045 Belvedere Road, whose garage is directly opposite the proposed addition.

9. Mr. Mertz testified that he did not have an objection to the variance *per se*, but was concerned about water runoff being exacerbated by the construction activities on the subject property (the homes on that side of the block are built at the bottom of a down slope from the rear property lines, and experience basement flooding). He also wanted to ensure that since the proposed addition would be approximately 4 feet away from the side of his garage, that proper fire safety rated materials and design would be required.

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<sup>2</sup> Appellant has also applied for permits for another addition (family room) to be constructed at the rear of the dwelling upon a preexisting slab foundation; however, said foundation is outside the previously approved variance of 4 feet, and no additional variance is required therefor.

10. In reply, Appellant's contractor testified his awareness of the water issues and suggested how he might remedy those issues, and that he would build the addition in compliance with the permit and code requirements, including any fire safety particulars.

11. No other persons testified in support of or provided evidence in support of or in opposition to the application, and nothing was received from any government agencies.

12. Appellant is seeking the variance due to the impracticality and significant cost to relocate the foundation slab, and the small change requested to the previously approved variance from 4 feet to 3.7 feet.

#### **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).<sup>3</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 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

<sup>3</sup> "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, Appellant’s contractor, Daniel Lafferty of DL Home Enhancements, LLC, testified that the circumstances (as noted by the Board in the findings of fact hereinabove) present a practical difficulty if Appellant must comply strictly with the side yard setback requirements. He further testified as to the impracticality of relocating the slab foundation and the small change being sought to the previously approved variance.

The Board finds that for the variance requested in this case, the impracticality of moving the foundation for the addition imposes an undue hardship on Appellant if the Ordinance were strictly enforced. The Board also gives weight to the *de minimis* nature of the variance being sought, and the fact that the most-affected neighbor’s concerns regard matters other than the variance itself. Finally, the Board believes that Appellant’s contractor will give due consideration to the water issues raised by Appellant’s neighbor and will comply with permit and code requirements applicable to the proposed construction. For these reasons, the Board finds that strict compliance with the Ordinance would render conformance unnecessarily burdensome, that denying the variance would do substantial injustice to Appellant, and granting the variance would observe the spirit of the Ordinance and secure public safety and welfare.

Therefore, Appellant’s request for a variance from the previously granted 4 foot right side yard setback to 3.7 feet for the existing slab foundation on the South side of the dwelling situate on the subject property, and the proposed addition to be constructed thereon, is GRANTED, by a vote of 5-0. Said variance is granted upon the condition that the location of the foundation and construction of the proposed addition thereon will continue to be 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: December 24, 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.