

ALLEGANY COUNTY BOARD OF ZONING APPEALS

**IN RE: APPLICATION OF
JOHN MCGEE
FOR A VARIANCE**

*
*

Case No.: 962

Hearing Dates: 11/06/2019

* * * * *

FINDINGS

This case came before the Allegany County Board of Zoning Appeals (the “Board”) upon John McGee’s request for variance of the special setback requirements found in Section 360-126, Table 2, of the Allegany County Zoning Code.

A field inspection of the subject property was conducted by the members of the Board on October 31, 2019. The purpose of the site visit was to examine the site layout in order for them to develop an understanding as to where the proposed use would be located and to assess the ability to grant a variance in this particular situation.

At the hearings held on November 16, 2019, the Board considered the attached list of exhibits which consisted of information gathered by the Division Chief and information provided by other agencies and individuals.

The proposed use is a pole building for storage. It is located on applicant’s property located at 11512 Creek Road, Cumberland, Allegany County, Maryland.

The Board considered testimony presented at the hearing in order to ascertain whether the proposed use and facts and circumstances surrounding this project would warrant the grant of a variance.

The Board’s findings are as follows:

1. The Board of Appeals is specifically authorized to grant a variance in this type of case by Section 360-141 (d) of the Allegany County Zoning Code.
2. That the proposed use is in harmony with current zoning in the area and the Allegany County Comprehensive Plan.
3. That Section 360-126, Table 2, of the Ordinance requires a minimum side setback distance of eight (8) feet from the property line.

4. That the evidence presented by the applicant establishes that the building, when erected, would have a side setback of approximately one (1) foot.

5. That the proposed structure does not meet the minimum side setback requirements and as a result is subject to the provisions of the Allegany County Zoning Code regarding modifications of the zoning regulations found in Section 360-141 (d).

6. That as a prerequisite to the granting of a variance, the applicant must establish that the property whereon structures are to be placed is, in and of itself, unique and unusual in a manner different from the nature of the surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property.

7. That the applicant produced testimony that, due to the size and shape of the property, the proposed storage building could not be built absent the variance requested. Specifically, the lot runs at an angle and the house does not sit square upon the property. In order to place the storage building upon the property to match the symmetry of the building, the requested variance must be granted.

8. That the neighboring property is owned by Allegany County and, by letter dated November 22, 2019, the County indicated that it had no objection with the variance and/or the erection of the storage building as requested by the applicant

9. That the site layout of the property and the location of an existing deck on the property are unique as compared to similarly situated properties.

10. That the necessity for a variance in this matter is not a result of any action taken by the applicant in this matter but merely the physical layout of the lot.

11. That the Board finds that strict adherence to the ordinance will create a practical difficulty for the applicant.

CONCLUSIONS

Based upon the findings set forth above, the Board voted at the conclusion of the hearing on November 16, 2019, 3-0 in favor of granting the Applicant's request for a variance as to the side setback requirement pursuant to Section 360-126, Table 2, of the Allegany County Zoning

Code. This grant was conditioned upon applicant gaining consent of the County to erect the building with the reduced setback which was granted on November 22, 2019. The applicant must comply with all other the terms and criteria of the Zoning Ordinance at all times and must also obtain the approval of all State, County, and municipal agencies whose approvals are required for the conduct of the proposed use.

ATTEST

BOARD OF ZONING APPEALS



By: _____



Mark Farris, Chairman

Copies to: See Attached List

Attachment: Exhibits List

BOARD OF ZONING APPEALS

FOR ALLEGANY COUNTY, MARYLAND

CASE# 962
MR. JOHN MCGEE

NOVEMBER 6, 2019

EXHIBITS LIST

- A. An Allegany County *Land Use Permit Summary* covering a *Land Use Permit Application* and assorted administrative documents (i.e. invoice(s), receipts, etc.)
- B. Site Plan.
- C. Completed *Petition for a Variance*.
- D. Photocopy of an Allegany County Tax Map for property identification.
- E. An *Adjoining Property Owners List* completed and signed by the Applicant.
- F. A *Notification of the Hearing*, with attached distribution list, dispatched to adjoining and adjacent property owners by the Secretary of the Board.
- G. *Notification of Hearing* dispatched to the Applicant by Secretary of the Board
- H. *Inter Office Memo*, prepared by the LDS office, distributed to the necessary *release agents* notifying them of this Case, date, time and requesting comment.
- I. *Public Notification*, dispatched to the Cumberland Times/News, for the purposes of notifying the general public of the hearing date, time and location.
- J. (portion) *Page #* (undisclosed) of the Saturday, October 12th, 2019, edition of the Cumberland Times/News, verifying that the *Public Notification* for Case 962 was published.
- K. Photo: *BOZA Site Visit of*
- L. Plat: Δ 1575/ACP&Z #S-99-23 (McGee, John, Dimensions 24x24)
- M. Email: Dated 10/21/2019, from Paul Busam, MDE, to LDS, regarding permit requirements of the State.
- N. Correspondence: Dated 10/30/2019, from Paul Busam, MDE, to Mr. McGee, regarding permit application requirements of the State.
- O. Memorandum dated November 4th, 2019, from James A. Squires Jr., Division Chief, LDS, to the Allegany County Board of Zoning Appeals, regarding *site development plan* requirements.

Mr. Melvin Deal et ux
11507 Creek Road, SE
Cumberland, MD 21502

Mr. Harold Jacobs
11510 Creek Road, SE
Cumberland, MD 21502-7912

Mr. John Jacobs
11510 Creek Road, SE
Cumberland, MD 21502-7912

Mr. John McGee
11601 Creek Road, SE
Cumberland, MD 21502-7985

Mr. & Mrs. Joel and Beth Stafford
1006 Leafy Hollow Circle
Mount Airy, MD 21771-2802

Mr. Larry Sullivan
11511 Creek Road, SE
Cumberland, MD 21502-7912

Honorable Jacob Shade
Allegany County Commissioners
701 Kelly Road - Suite 408
Cumberland,, MD 21502

Maildata BOZA Case 962
Hearing: November 6, 2019