

ALLEGANY COUNTY BOARD OF ZONING APPEALS

**IN RE: APPLICATION OF
WILLIAM JEWELL
FOR A VARIANCE**

* Case No.: 951

* Hearing Dates: 08/02/17
08/03/17

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FINDINGS

This case came before the Allegany County Board of Zoning Appeals (the "Board") upon William Jewell's request for variance of the setback requirements found in Section 360-127 A.(2) of the Allegany County Zoning Code.

A field inspection of the subject property was conducted by the members of the Board on July 27, 2017. The purpose of the field inspection was to familiarize the Board members with 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 August 2, 2017 and August 3, 2017, 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 will be located on the south west side of Roselawn Ave., 300 feet south east of US 40 National Highway, Allegany County, Maryland. The Applicant's home is located on the same lot as the proposed use.

The proposed use is a garage. It will be a one story attached garage measuring 18' x 22' in dimensions. It will be replacing an existing structure on the site of similar dimension. The Applicant plans to use the garage to store personal use vehicles. No commercial activities shall be conducted on the site.

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 property upon which the proposed structure is to be placed is adjacent to an unimproved alley, consisting of a twelve (12) foot public right of way.

3. That Section 360-127 A.(2) of the Ordinance requires a minimum setback distance from alleys of fifteen (15) feet from the right of way or twenty (20) feet from the center line for all structures, including accessory structures.

4. That the evidence presented by the applicant clearly demonstrates that the proposed structure would be located ten (10) foot from the center line of the alley.

5. That evidence presented also establishes that a pre-existing, non-conforming structure is currently erected in the same footprint as the proposed new structure.

6. That the proposed structure does not meet the minimum setback requirements and as a result is subject to the provisions of the Allegany County Zoning Code regarding modifications of the zoning regulations.

7. 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.

8. That the evidence presented demonstrates that the applicant created his own hardship in this matter by failing to design his garage within the required set back limits.

9. That the property layout is not peculiar nor unique and the proposed use could have been placed upon the property without need for a variance if the applicant had followed the existing zoning ordinance when laying out the project.

10. That the Board does not believe that a variance is necessary in this case due to the presence of a pre-existing, non-conforming structure which would allow this project to proceed under Article XIX of the Allegany County Zoning Code.

11. That evidence presented demonstrates the proposed structure is replacing an existing non-conforming structure and said proposed structure will not alter or enlarge the footprint of the existing structure more than fifty percent (50%) in area.

12. The Board finds that absent an increase of the footprint of the proposed structure by fifty percent (50%) or more, Board of Appeals action is unnecessary and any necessary permits can

be handled administratively.

CONCLUSIONS

As stated by the appellate court: “Self-inflicted or self-created hardship is never considered grounds for a variance. Where an applicant creates a nonconformity, the board lacks the power to grant a variance.” *Cromwell v. Ward*, 102 Md. App 691, 651 A.2d 424 (1995). As a result, the Board’s hands are tied and it has no choice but deny applicant’s requested variance. However, for the reasons stated above, this denial is not fatal to the project. As such, the Board voted at the conclusion of the hearing of August 3, 2017, unanimously to deny the Applicant’s request for a variance as to the setback requirements found in Section 360-127 A.(2) of the Allegany County Zoning Code.

ATTEST

BOARD OF ZONING APPEALS



By: 
Julia Williams, Chairperson

Copies to: See Attached List
Attachment: Exhibits List