

ALLEGANY COUNTY BOARD OF ZONING APPEALS

**IN RE: APPLICATION OF
ALLEGANY JUNCTION
LIMITED PARTNERSHIP
FOR A VARIANCE**

* **Case No.: 952**
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* **Hearing Date: 11/01/17**

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FINDINGS

This case came before the Allegany County Board of Zoning Appeals (the "Board") upon Allegany Junction Limited Partnership's request for a variance of the buffer requirements found in Section 360-135.D.(4). of the Allegany County Zoning Code.

A field inspection of the subject property was conducted by the members of the Board on October 26, 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 hearing on November 11, 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 northeast side of Old Legislative Road; 500' southeast of Surveyors Way, North of Candlewood Way, Midlothian, Allegany County, Maryland.

The proposed use is two (2) multi-family residential apartment buildings consisting of a combined forty (40) residential units designed as a planned development.

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.(1).(b). of the Allegany County Zoning Code.
2. That the standards for planned developments are found in Section 360-135.D.
3. That Section 360-135.D.(4). of the Ordinance requires that each planned development

must have a fifty (50) foot screening buffer on the side and rear lot lines.

4. That the evidence presented by the applicant clearly shows that the buffer as planned is only twenty-one (21) feet wide and will require a variance of twenty-nine (29) feet to meet the development standards.

5. 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.

6. That the evidence presented demonstrates that the applicant created his own hardship in this matter by designing a planned development which does meet code requirements. Testimony demonstrated that the applicant could have moved one of the residential units back the twenty-nine (29) feet required to meet the code but they elected not to do so because they wanted to protect existing forest land. There was also testimony regarding the difficulty which would have existed in removing a large section of a steep slope to accommodate the required buffer.

7. 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 modified the design and followed the existing zoning ordinance when laying out the project.

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 must deny applicant's request. As such, the Board voted at the conclusion of the hearing unanimously to deny the Applicant's request for a variance as to the buffer requirements found in Section Section 360-135.D.(4). of the Allegany County Zoning Code.

BOARD OF ZONING APPEALS

FOR ALLEGANY COUNTY, MARYLAND

CASE# 952
ALLEGANY JUNCTION L.P.

NOVEMBER 1, 2017

EXHIBITS LIST

- A. An Allegany County *Land Use Permit Summary* covering a *Land Use Permit Application*, related ancillary documentation and *Plans*; *Plans* comprised of:
 - A-1 One page, 24x36 *Site Development Plan*
 - A-2 One page, 24x36 plan entitled *Turning Movements Exhibit*
 - A-3 Multi-page, 8x11 "lighting" plan.
- B. Completed *Petition for a Variance*, with Affidavit attached.
- C. Photocopy of an Allegany County Tax Map for property identification.
- D. An *Adjoining Property Owners List* completed and signed by the Applicant.
- E. A *Notification of the Hearing*, with attached distribution list, dispatched to adjoining and adjacent property owners by the Secretary of the Board.
- F. *Notification of Hearing* dispatched to the Applicant by Secretary of the Board
- G. *Inter Office Memo*, prepared by the LDS office, that was distributed to the necessary review agents notifying them of this Case, date, time and requesting comment.
- H. *Public Notification*, dispatched to the Cumberland Times/News, for the purposes of notifying the general public of the hearing date, time and location.
- I. *Page 7B* of Saturday, October 14th, 2017, edition of the Cumberland Times/News, verifying that the *Public Notification* for Case 952 was published.
- J. Returned *Inter-Office-Memo*, dated 10/16/2017, from Mark McKenzie - SHA, with comment; ".. no comment..."
- K. Photographs of site; multi-page with comments noted by Applicant.
- L. Memorandum dated 10/31/2017, from James A. Squires Jr., Division Chief, to the Allegany County Board of Zoning Appeals, regarding site development plan requirements.

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Hearing: November 1, 2017
Last Revised: 17:108

ATTEST

BOARD OF ZONING APPEALS



By: 

Julia Williams, Chairperson

Copies to: See Attached List
Attachment: Exhibits List