

ALLEGANY COUNTY BOARD OF ZONING APPEALS

**IN RE: APPLICATION OF
FRANKENBERRY
PROPERTIES, LLC.
FOR A VARIANCE**

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Case No.: 965

Hearing Dates: 02/24/21

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FINDINGS

This case came before the Allegany County Board of Zoning Appeals (the “Board”) upon Frankenberry Properties, LLC.’s request for variance of the setback requirements found in Section 360-128, Attachment 3, Table 4, of the Allegany County Zoning Code.

A field inspection of the subject property was conducted by the members of the Board on February 18, 2021. The purpose of the site visit was to examine the site layout 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 February 24, 2021, 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 current use is a residential dwelling unit in a B-2 Zoning District. It is located on applicant’s property located southeast of Vocke Road (MD 658); 300’ Northeast of Country Club Road; 200’ southwest of Walker Road, and is known as 1254 Vocke Road, LaVale, Allegany County, Maryland.

Two variance issues were raised by Applicant. First, Applicant seeks to remove the current residence and replace it with an insurance office. This will change the characteristic of the use from residential to commercial. The new structure will then fall under the definition of “Neighborhood Commercial” as a “professional office”. The property is currently bounded on its eastern side by the R-1 District. The variance request stems from the requirement that there must be a 25-foot setback from the property line with a vegetative buffer when a “Neighborhood Commercial” use is placed adjacent to an R-1 District. Applicant would like to place a six-foot privacy fence in place of the vegetative buffer. The second issue before the Board was an

amended variance request filed dealing with the necessity of a stormwater management pond on the property.

The Board considered testimony presented at the hearing 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 360-128, Attachment 3, Table 4, of the Ordinance requires a 25-foot setback with a vegetative buffer when a "Neighborhood Commercial" structure is placed adjacent to an R-1 district.
4. 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.
5. That the applicant produced testimony that the property is uniquely shaped. The northern side of the property fronting on Vocke Road is 125 feet across. The property then tapers sharply to a single point at its southern end. Due to the irregular shape and the acute angle of its southern side, a significant portion of the property would be used for the required setback.
6. That if the vegetative screening buffer were to be required, there would not be enough land to build which would prohibit the intended use and defeat the purpose of the B-2 zone.
7. That the neighboring property owner, Ms. Jana M. Dawson, appeared before the court and indicated that she had no objection with the variance, or the proposed six-foot privacy fence being used in place of the vegetative buffer.
8. 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.

9. That the Board finds that strict adherence to the ordinance will create an undue hardship for the applicant in that denial of the variance will result in the applicant's inability to use his property for a permitted use.

10. That allowing the six-foot privacy fence in lieu of the vegetative buffer will allow applicant to use his property for a permitted purpose while still providing screening consistent with the intent of the ordinance.

11. That testimony provided by Michael Coughenour indicated that, in his professional opinion, there was need for a variance for a stormwater management pond as there would not be a "structure" on the property which would require such a variance.

12. That the testimony of Mr. Coughenour was not challenged, and the Board finds his professional opinion persuasive and that no action is necessary regarding the second variance request.

13. That the Board observed that in the proposed site plan (Exhibit S) one corner of the proposed structure sits approximately 1.5 feet into the required 25-foot setback. The Board, upon its own motion, granted a variance of the 1.5 feet to the applicant finding that for the reasons stated prior regarding the unique qualities of the property, justice would dictate granting such a variance.

CONCLUSIONS

Based upon the findings set forth above, the Board voted at the conclusion of the hearing on February 24, 2021, 3-0 in favor of granting the Applicant's request for variances as outlined. The applicant must always comply with all other the terms and criteria of the Zoning Ordinance 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

Michael Coughenour
James Sweeney

By: Mark Farris
Mark Farris, Chairman

BOARD OF ZONING APPEALS
FOR ALLEGANY COUNTY, MARYLAND

CASE# 965
FRANKENBERRY PROPERTIES LLC

FEBRUARY 24, 2021

EXHIBITS LIST
FINAL

- A. An Allegany County *Land Use Permit Summary* covering a *Land Use Permit Application* and assorted administrative documents (i.e. invoice(s), receipts, sketch plans, SDAT Account Summaries, etc.)
- B. *Site Plan* dated January 2021.
- C. *Plan of Survey* (entitled Frankenberg/Reichert) of adjoining property, dated 6/25/2020; portion of adjoining property secured by Mr. Barth Frankenberg for inclusion within the proposed lot redevelopment.
- D. Completed *Petition for Variance*; includes documentation regarding amendment to *variance request* prepared by Mr. Michael Llewellyn, Esquire, and dated 2/16/2021.
- E. Photocopy of an Allegany County Tax Map for property identification.
- F. An *Adjoining Property Owners List* completed and submitted by the Applicant.
- G. A *Notification of the Hearing*, with attached distribution list, dispatched to adjoining and adjacent property owners by the Secretary of the Board.
- H. *Notification of Hearing* dispatched to the Applicant by Secretary of the Board
- I. *Inter Office Memo*, prepared by the LDS office, distributed to the necessary *release agents* notifying them of this Case, date, time and requesting comment.
- J. *Public Notification*, dispatched to the Cumberland Times/News, for the purposes of notifying the general public of the hearing date, time and location.
- K. Portion of *Page 6B* of Saturday, February 6th, 2021, edition of the Cumberland Times/News, verifying that the *Public Notification* for Case 965 was published.
- L. Portion of County Tax Parcel Map, with current *Zoning* overlay, identifying Applicant's properties and their relationship to existing *zoning boundaries*.
- M. Two page document depicting extracts of text from the previous *zoning regulations* (2017 version) and current *zoning regulations* (2019 version). Text relates to the application of buffer(s) relative to proposed *use(s)* and *zoning district boundaries*, etc..
- N. Returned *Inter-Office-Memo*, dated 02/05/2021, from Daniel DeWitt, County Engineer, regarding comments on site design criteria and the necessity of certain documentation.
- O. Correspondence dated 2/17/2021, from Amy Stonebreaker, LDS Planner, conveying comments to Coughneouer Surveying relative to the *site development plans*, the project and site.
- P. Email dated 02/18/2021, from Mark McKenzie - SHA, conveying the Applicant's requirements and responsibilities for obtaining MDOT SHA approval for the proposed project.
- Q. Memorandum dated 2/18/2021, from Whitney Daugherty, Land Use Planning Engineer, conveying comments to Coughenouer Surveying relative to the *site development plans*, the project and site.
- R. Memorandum dated 2/23/2021, prepared by James A. Squires Jr., Division Chief, dispatched to the Allegany County Board of Zoning Appeals, regarding *site development plan* requirements relative to Case 965.
- S. 24x36 *Site Plan*, colorized; dated January 2021.

DIST LIST (CASE 965) :

Ms. Jana Marie Dawson
1256 Vocke Road
LaVale, MD 21502

Michael Hartman, Sr. et ux
9 Walker Road
LaVale, MD 21502

Ms. Pamela Hout c/o Patricia Ann Emerick
7 Walker Road
LaVale, MD 21502

John Reichert et ux
1250 Vocke Road
LaVale, MD 21502

Mr. Stephen Vance
3 Walker Road
LaVale, MD 21502

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

MDOT State Highway Administration
1251 Vockie Road
LaVale, MD 21502

Maildata BOZA Case 965
Hearing: February 24th, 2021
Date Prepared: 02/02/2021