

ALLEGANY COUNTY BOARD OF ZONING APPEALS

**IN RE: APPLICATION OF
SHARON PETERS
FOR A VARIANCE**

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Case No.: 963

Hearing Dates: 03/04/20

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FINDINGS

This case came before the Allegany County Board of Zoning Appeals (the “Board”) upon Sharon Peters request for variance of the setback requirements found in Section 360-127. A., Table 3, Part 4, of the Allegany County Zoning Code.

A field inspection of the subject property was conducted by the members of the Board on February 27, 2020. 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 March 4, 2020, 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 building for storage. It is located on applicant’s property located at 14002 Uhl Highway, SE, 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 360-127. A., Table 3, Part 4, of the Ordinance requires a 25-foot setback from the existing public right of way.

4. That the evidence presented by the applicant establishes that the building actually sits eight (8) feet from the right of way and that the applicant owns the property on both sides of the existing right of way.

5. That the 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 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 storage building could not be placed absent the variance requested. Specifically, the lot runs on a slope of increasing degree and the building could not be set square upon the property. In order to place the storage building upon the property and keep it level, the requested variance must be granted.

8. That the neighboring property owners, Mr. Puffenbarger and Mr. Stallings, by letters presented before the court, indicated that they had no objection with the variance and/or the location of the storage building as established by the applicant

9. That the site layout of the property and the existing slope 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.

12. That the Board finds that the necessity of the variance requested is in question due to the nature of the right of way upon which the storage building fits.

13. That the Board finds that Section 360-127. A., Table 3, Part 4, of the Ordinance requiring a 25-foot setback from the existing public right of way does not apply as the right of way in question is not a public right of way for the purposes of the variance request.

14. That the Board finds that applicant's ownership of both sides of the right of way and

her creation of the right of way do not, in this case, make the right of way public and, as such, no variance is necessary.


CONCLUSIONS

Based upon the findings set forth above, the Board concluded that a variance was not required in this matter as the right of way in question was not a public right of way. However, the Board also found that the other criteria for obtaining a variance was met and to avoid any question on the issue voted at the conclusion of the hearing on March 4, 2020, 2-0 in favor of granting the Applicant’s request for a variance as to the setback requirement pursuant to Section 360-127. A., Table 3, Part 4, of the Allegany County Zoning Code. 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: 
Bernard Wolters, Acting-Chairman

Copies to: See Attached List
Attachment: Exhibits List

BOARD OF ZONING APPEALS

FOR ALLEGANY COUNTY, MARYLAND

CASE# 963
MS. SHARON PETERS

MARCH 4TH, 2020

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, etc.)
- B. Site Plan (ver. 2/12/2020).
- C. Correspondence dispatched by Mrs. Amy Stonebreaker, LDS Planner, to the Applicant, dated January 17th, 2020, regarding a *zoning certification* for the proposed project.
- D. Completed *Petition for Variance*.
- E. Photocopy of an Allegany County Tax Map for property identification.
- F. An *Adjoining Property Owners List* completed and signed 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 5B* of the Tuesday, February 18th, 2020, edition the Cumberland Times/News, verifying that the *Public Notification* for Case 963 was published.
- L. Photograph of the subject structure placed on the lot located at 14002 Uhl Highway, SE.
- M. Plat Δ 673 recorded among the Land Records of Allegany County, Maryland, depicting the subject lot.
- N. Assorted *Land Records* (deeds) of the subject and adjoining property(ies); certain pages of said include staff notes.
- O. Memorandum dated March 3rd, 2020, from James A. Squires Jr., Division Chief, to the Allegany County Board of Zoning Appeals, regarding site development plan requirements.
- P. Correspondence dated 3/2/2020, from Mr. & Mrs. Alan Puffenberger, declaring that they have "no objection" to the granting of a *variance* for the Peter's project
- Q. Correspondence (received 3/4/2020) from Mr. & Mrs. Richad Stallings declaring that they have "no objection" to the granting of a *variance* for the Peter's project

Mr. Carleton Shore
Advern Living Trust c/o Anna M. Shore Living
Trust c/o Debra Bendix
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Jupiter, FL 33458

Mr. Alan Puffenberger et ux
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Cumberland, MD 21502

Mr. James & Dolly Wilson
12605 Wilson Lane, SE
Cumberland, MD 21502

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

Mr. Richard & Sharon Stallings
12606 Wilson Lane, SE
Cumberland, MD 21502

Maildata BOZA Case 963 - Peters
Hearing: March 4th, 2020