

FREDERICK COUNTY BOARD OF APPEALS
STAFF REPORT for MARCH 28, 2019 @ 7pm

Case Number: B-19-03, AP 19072

Applicant: Frank and Iwona Gerner, 3545 Brethren Church Road, Myersville MD 21773

Appeal: Variances of 31 feet from the 40 ft. front yard setback in accordance with Section 1-19-3.220 of the Frederick County Zoning Ordinance.

Location: Located at 3545 Brethren Church Road, Myersville MD 21773, Tax Map 0046, Parcel 0366, and Tax ID #16349496),

Planning Region: Myersville

Zoning District: (A) Agricultural

Comp. Plan Designation: Agricultural/Rural

Applicable Ordinances: Sec. 1-19-3.220 Variances
Sec. 1-19-6.100 Design Requirements

Background:

The applicants property is zoned Agricultural and is approximately 4.37 acres. The applicant states that in 1998, the property owners received a Variance for the garage on the property per **B-98-53** that granted a Variance of 18 ft. from the required 40 ft. setback.

Proposal:

The applicant is proposing to construct an in ground pool in the same location where an above ground had previously existed. The pool will be up to 9 feet from the front property line. The applicant states in his justification that a variance of 31 feet from the front yard setback requirements is needed due to the orientation of the house and other factors.

General Criteria - Variance:

Under the provisions of Section 1-19-3.220(C) of the County Zoning Ordinance, the Board of Appeals shall not grant a variance unless and until a public hearing is held and all of the following criteria are met:

- (A) **The Board of Appeals may authorize a variance in height, lot area and yard regulations.**

The Applicant is requesting a variance from the 'yard' regulations as listed under Section 1-19-6.100.

- (B) **An application for a variance shall be filed with the Board of Appeals only after refusal of zoning approval or an adverse determination has been issued by the Zoning Administrator.**

The applicant met with the Zoning Administrator who determined that a variance from the required property line setbacks was needed.

- (C) **The Board of Appeals shall not grant a variance unless and until a public hearing is held and all of the following criteria are met:**

The public hearing is scheduled for March 28, 2019.

- (1) **First, the Board of Appeals shall find that special conditions and circumstances exist which are unique to the land or structure involved and which are not applicable to other lands or structures in the same district.**

Due to the orientation of the house and the stovepipe driveway, this lot differs from all those around it and the majority of lots in the County thus making for a unique hardship for constructing any accessory structure. This is why the County granted the variance for the garage in 1998 and why we are requesting a variance for an in ground swimming pool.

- (2) **Upon making this finding the Board of Appeals shall also find that the following criteria are met:**

- (a) **That the special conditions and circumstances do not result from the actions of the applicant; and**

The applicant states that the location of the house and the nature of the property were not determined by any action of the property owner.

- (b) **The literal interpretation of the provisions of this chapter would result in unreasonable hardship and deprive the applicant of rights commonly enjoyed by other properties in the same district under terms of this chapter; and**

The applicant states that should no variance be granted, there is no other reasonable or safe location to construct an in ground swimming pool. This is an unreasonable hardship based on the orientation of the house and the driveway location. The front yard building restriction line is arbitrary in relation to this lot as it is not in the physical front yard but on the side yard.

- (c) That granting the variance will not confer on the applicant any special privilege that is denied by this chapter to other lands or structures in the same district; and**

The applicant states that given the orientation of the house, there is no special privilege granted to the property owner by allowing them to construct a swimming pool that encroaches into the front yard building restriction line. The pool will be physically located in the rear of the house.

- (d) That the granting of the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.**

The applicant states that the in ground swimming pool will be located behind the house and near the rear property lines of all immediate neighbors. Perhaps thinking of this request in reverse will help our case. We could on this property, within code, construct a swimming pool in the physical front of the house where the existing driveway and front entrance are located because of the orientation of the house and the character of the lot. That is, it would be allowable by definition of the building restriction lines. This would be detrimental to the value of the property and to the neighborhood, and would not be slightly or safe, even though it is allowable by code. Thus it seems reasonable that we should be able to build a pool in the location that pools are expected to be built and a variance ought to be granted to allow us to do so.

- (D) In granting the variance, the Board of Appeals may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, is a violation of this chapter.**

The applicant understands this.

- (E) Under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of this chapter in the zone involved, or any use expressly or by implication prohibited by the terms of this chapter in said zone.**

The applicant understands this.

- (F) Under no circumstances shall the Board of Appeals grant a variance to a nonconforming structure for the portion of structure determined by the Zoning Administrator to be nonconforming.**

The applicant understands this.

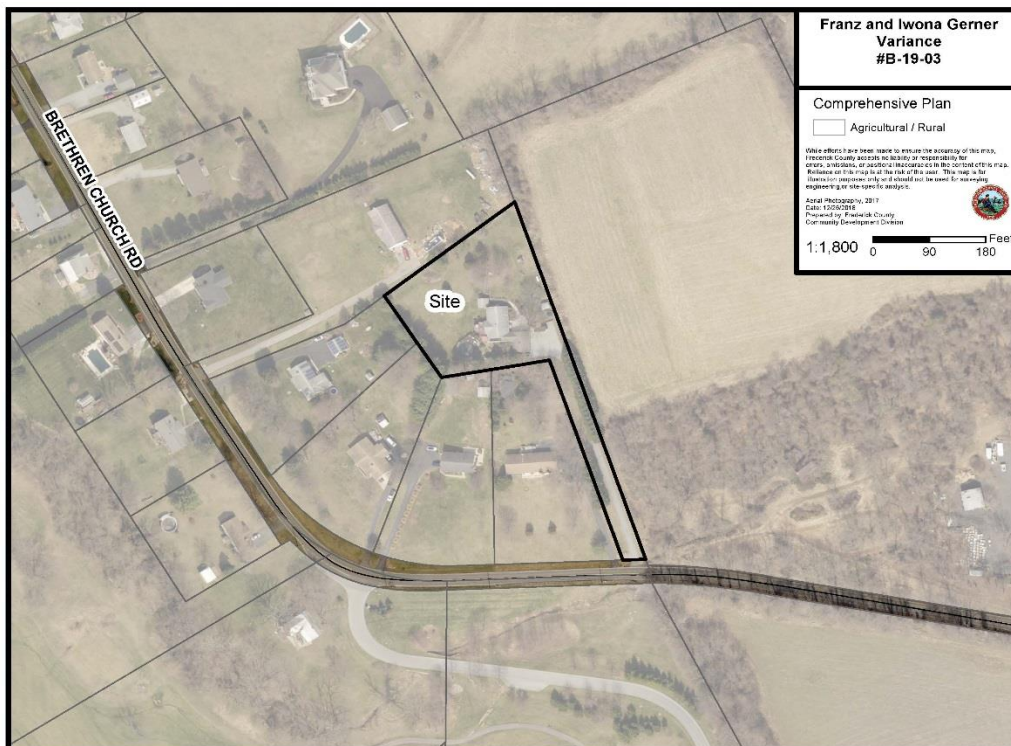
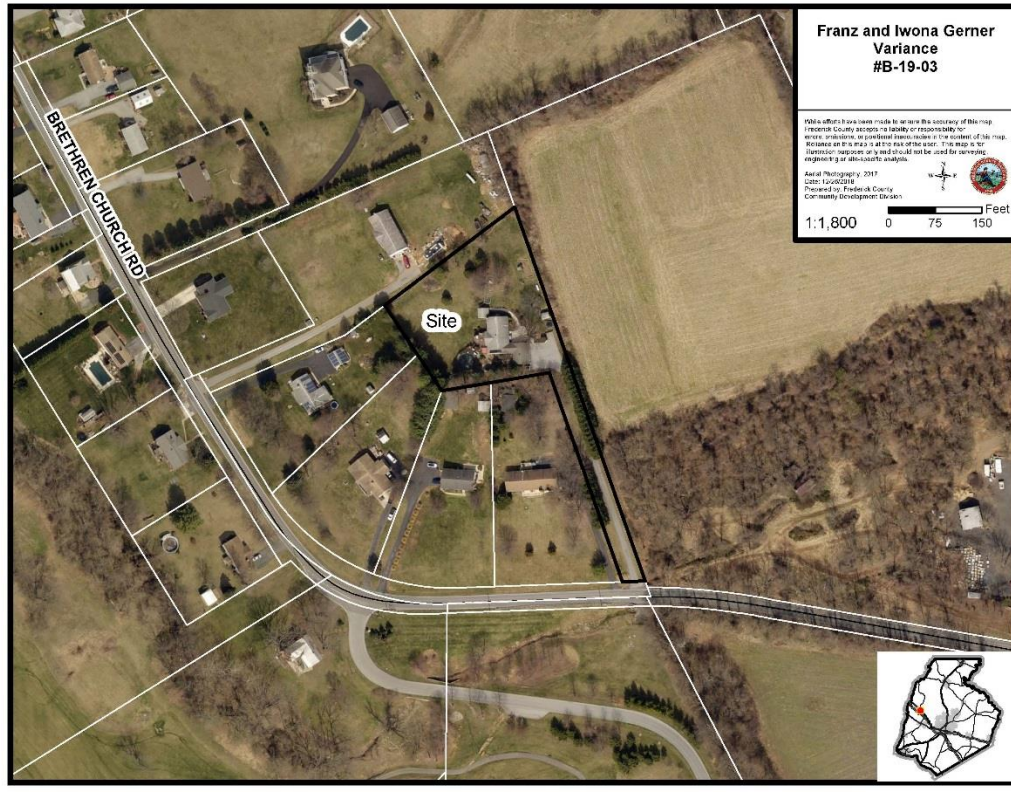
(G) A decision of the Board of Appeals granting a variance will be void 2 years from date of approval by the Board of Appeals unless the use is established, a building permit is issued, construction has begun, or final site development plan approval has been received in accordance with the terms of the decision. Upon written request submitted to the Zoning Administrator no later than 1 month prior to the expiration date and for good cause shown by the applicant, a 1 time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.

The applicant understands this.

Actions Needed:

Staff requests that the Board review the general criteria for a Variance under Section 1-19-3.220 (Variances) and Section 1-19-6.100 Design Requirements and render a decision on the Applicant's request.

Maps



Maps Cont.

