

FREDERICK COUNTY BOARD OF APPEALS
STAFF REPORT for August 22, 2019 @ 7pm

Case Number:

B-19-30, AP# 19679

Applicant:

Doug DelGandio

Appeal:

Variances of 15 feet from the 25 ft. front yard setback in accordance with Section 1-19-3.220 of the Frederick County Zoning Ordinance.

Location:

The property identified as 6765 Accipiter Drive, New Market, MD, 21774, Tax Map 0069, Parcel 0131, Tax ID#27-526926, .50 Acres,

Planning Region:

New Market

Zoning District:

Planned Unit Development (PUD).

Comp. Plan Designation:

Low Density Residential

Applicable Ordinances:

**Sec. 1-19-3.220 Variances
Sec. 1-19-6.100 Design Requirements**

Background:

The applicants property is zoned Planned Unit Development (PUD) and is approximately .50 acres. The property is unique due to the topography of the lot, with existing slopes as steep as 80%. The terrain creates a hardship for the building of a dwelling that when coupled with the current setback requirements, becomes an unreasonable hardship, and deprives the applicant from building a dwelling on the property in a reasonable manner.

Proposal:

The Applicant seeks a Variance under Ordinance Section 1-19-3.220, of 15.0 feet from the required 25-foot front yard setback in order to construct a single-family dwelling.

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 request is for a variance in yard regulations

(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 states that the Zoning Administrator has issued the adverse determination.

(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:

(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.

The applicant states that the property is unique due to the geography of the lot, with slopes on site as steep as 80%.

(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 special conditions and circumstances were created by the PUD zoning district setback requirements, and have not resulted from any action of the applicant.

(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 Property's terrain creates a hardship for the building of a dwelling that when coupled with the current setback requirements, creates an

unreasonable hardship, and deprives the applicant from building a dwelling on the property in a reasonable manner.

- (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 the granting the variance will allow the owners to construct a residential dwelling similar to those in the surrounding neighborhood and does not grant them any special privilege denied to other lands or structures in the same district.

- (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 granting of the variance will allow the property to be used in a way that is in harmony with the surrounding neighborhood, and to contain a residential dwelling.

- (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 states that all prescribed appropriate conditions and safeguards will be followed.

- (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 states that the proposed use of the property, Residential, is an allowed use in the PUD district.

- (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.

No portion of the proposed structure will be nonconforming.

Actions Needed:

Staff requests that the Board review the general criteria for a Variance under Section 119-3.220 (Variances) and Section 1-19-6.100 Design Requirements and render a decision on the Applicant's request for a Variances of 15 feet from the 25 ft. front yard setback.

Maps



