

**FREDERICK COUNTY BOARD OF APPEALS**  
**STAFF REPORT for October 24, 2019 @ 7pm**

**Case Number:** B-19-32, AP# 19845

**Applicant:** Stephen and Teri Barrett

**Appeal:** Requesting a *Variance* pursuant to Section 1-19-3.220 of the Frederick County Zoning Ordinance from the Building Restriction Lines, Section 1-19-6.100 of the Frederick County Zoning Ordinance, in order to build a two family dwelling unit. The variance request includes a 7 ft variance from the 30 ft required front setback, and a variance of 5 ft from the required 10ft side yard setback.

**Location:** The property identified as 12002/04 North Street, Libertytown MD 21762. Tax Map 51, Parcel 63 Tax ID 08-214069, Lot (300 ft X 50 ft,) Zoned Low Density Residential (R3)

**Planning Region:** Walkersville

**Zoning District:** Low Density Residential (R3).

**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 the lot size is approximately 15000 Sq.Ft. the Structure has been in use as a residential structure for decades, the building is in violation of the current Frederick County Zoning Ordinance ("Zoning Ordinance") as established in 1977. The building is a nonconforming structure, as defined by §1-19-4.220 of the Zoning Ordinance, because the Structure sits on the property line, but the Zoning Ordinance requires at least ten (10) feet between the structure and the road. The Structure is also within the thirty feet setback requirement for front of the property.

## **Proposal:**

The applicant is requesting a *Variance* pursuant to Section 1-19-3.220 of the Frederick County Zoning Ordinance from the Building Restriction Lines, Section 1-19-6.100 of the Frederick County Zoning Ordinance, in order to build a two family dwelling unit. The variance request includes a 7 ft variance from the 30 ft required front setback, and a variance of 5 ft from the required 10ft side yard setback.

## **General Criteria - Variance:**

Section 1-19-3.220 of the Frederick County Zoning Ordinance sets forth the criteria which must be satisfied before the Board of Zoning Appeals may grant a variance. The Applicant's request satisfies all of these criteria which are described as follows:

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

*The Applicant is seeking variances of the yard regulations to allow for a two-family dwelling to be constructed on the Property within the set-back zone. Although a new dwelling would be constructed, it would not change the current usage of the property, as the current Structure has operated as a two-family dwelling on the 12002/04 lot.*

- (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 requested approval from the Frederick County Permitting and Zoning Administrator ("Zoning Administrator") for a remodeling project known as 12002/04 North Street, Libertytown, MD. The Zoning Administrator determined on or about May 21, 2019 that 12002-04 was a non-conforming structure, and that Staff was unable to approve a piecemeal reconstruction of the two units without Board of Appeals variance approval in accordance with 1-19-4.220.3(a) and (b). Legal counsel to the applicant subsequently met with the Zoning Administrator on August 14, 2019, and discussed the need for a variance.*

- (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 current structure was built before the enactment of the Frederick County Zoning Ordinance. The special conditions and circumstances created by the historic existence of the structure, the proximity of the property to the adjoining road, and the later enactment of the yard regulations in the Frederick County Zoning Ordinance are such that they are unique to the Property and not applicable to other lands or structures in the R3 Zoning District.***

- (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
  - (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
  - (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
  - (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 construction of the Structure pre-dated the Applicant taking ownership of the Property by decades, and therefore the special conditions and circumstances do not result from the actions of the Applicant. A literal interpretation of the yard regulations of the Zoning Ordinance result in the Applicant likely not being able to obtain permits to make improvements to the structure and would prevent the Applicant from financing or conveying the respective property. Therefore, such a literal interpretation would result in unreasonable hardship for the Applicant and deprive the Applicant of rights commonly enjoyed by other property owners in the R3 Zoning District. The interpretation would further result in a regulatory taking as it would prevent any usage of the property. The granting of the requested variance will not confirm any special privilege, since it will simply confirm conditions already existing, and any other applicable regulations would still constrain future activities, as those regulations would for any other property in the R3 Zoning District. Since the requested variance allows for bringing into formal compliance the conditions that have existed for decades, and allows for the Applicant to make highest and best use of their property, as would any other property owner in the vicinity, granting of the variance will not be***

***injurious to the neighborhood or otherwise detrimental to the public welfare by replacing a dangerous non-conforming structure with one that is safer for the community and motorists.***

- (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 acknowledges such.***

- (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.

***Residential uses (two-family dwelling) are permitted in the R3 Zoning 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.

***As of the date of this application, the Zoning Administrator has not determined any portion of the subject structures to be nonconforming.***

- (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 acknowledges such.***

**Actions Needed:**

Staff requests that the Board review the general criteria for a Variance under Section 1193.220 (Variances) and Section 1-19-6.100 Design Requirements and render a decision on the Applicant's request for Variances. The variance request includes a 7 ft variance from the 30 ft required front setback, and a variance of 5 ft from the required 10ft side yard setback.



# MAPS







