

FREDERICK COUNTY BOARD OF APPEALS
STAFF REPORT FOR VIRTUAL PUBLIC HEARING ON JUNE 25, 2020 @ 7pm

Case Number: B-20-05, B259944

Applicant: John Tocar

Appeal: Applicant requesting a Variances of 50 feet from the 90 ft. approved front Building Restriction Line (BRL) in accordance with Section 1-19-3.220 Variance, contained in the Frederick County Zoning Ordinance in order to construct a 24 ft. X 50 ft. accessory building, totaling 1200 Sq.ft. to be used for storage and as a personal workshop.

Location: The property is described as 4935 Tall Oaks Drive, Monrovia, MD 21770, Tax Map 0089, Parcel 0209, and Tax ID # 09258035, Zoning Low Density Residential (R1), Size 1.018 acres

Planning Region: New Market

Zoning District: Low Density Residential (R1)

Comp. Plan Designation: Rural Residential

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

Background:

The applicants property is zoned Low Density Residential (R1) and is 1.01 acres in size. Lots in this area tend to have front yards setbacks that exceed the required 40 ft. Front Building Restriction Line (BRL). The applicant's property has an approved 90 ft. Front BRL. (*Attachment 2*)

Proposal:

The applicant is requesting a 50 ft. variance of the 90 ft. approved front BRL (*Attachment 1*) to construct a 24 ft. X 50 ft. accessory building, totaling 1200 Sq.ft. (*Attachments 3 and 4*) to be used for storage and as a personal workshop. This is not to be used as part of any home occupation as defined in the Frederick County Zoning Ordinance, Section 1-19-11.100, and in accordance with Section 1-19-8.240.(A)(5) Accessory Uses on Residential Properties, without appropriate permits.

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 June 25, 2020

- (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's lot, designated as lot 5, has a unique pie shape. This shape is not consistent with lots 2, 3 and 4 in the same subdivision. Lot 5 has a portion that is well clear of the septic area and other possible obstructions. The applicant requests that a small portion of this area be used to locate the proposed structure.

- (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 there are no special circumstances that result from actions 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 applicant states that the construction of an accessory structure or garage adjacent to an existing long-standing dwelling is a right enjoyed by other property owners in the R-1 Low Density Residential zoning district under 1-19-6.100 of the Zoning Ordinance. Denial of this request would result in unreasonable hardships and deprive the applicant of rights commonly enjoyed by other property owners in the neighborhood.

- (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 an accessory structures and/or garages in this district are a common occurrence and granting a Variance to the applicant is not considered a special privilege given the circumstances surrounding this appeal. Placement in the proposed location would constitute a right commonly enjoyed by other properties in the same district, however in this case the applicant is deprived of this right due to restrictive set back (BRL) requirements.

- (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 be in total harmony with the way of life in the neighborhood and will not be injurious or otherwise detrimental to the public welfare. The proposed structure will be constructed to the highest building standards and will comply with all required building codes. It will also be well appointed and have a fine appearance complementing other structures in the neighborhood.

- (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.

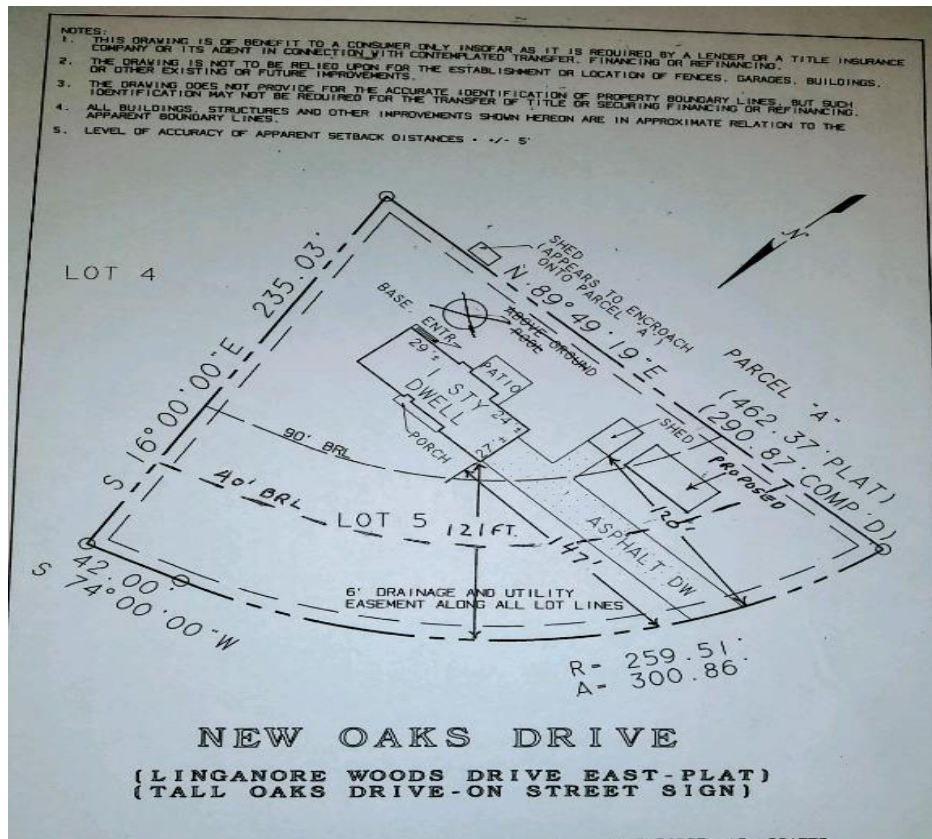
- (G) A decision of the Board of Appeals granting a variance will be void 2 years from date of approval by the Board of Appeals unless the use is established, a building permit is issued, construction has begun, or final site development plan approval has been received in accordance with the terms of 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.

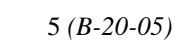
Actions Needed:

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 to construct a 24 ft. X 50 ft. accessory building, totaling 1200 Sq.ft. to be used for storage and as a personal workshop.

Attachment 1



Attachement 3



Attachment 4



Maps

