

FREDERICK COUNTY BOARD OF APPEALS
STAFF REPORT VIRTUAL MEETING ON JUNE 23, 2022 @ 7pm

Case Number: B-22-20 (B273258)

Applicant: Fingerboard Holding LLC

Appeal: Requesting approval by the Board of Appeals to grant a variance in accordance with Section 1-19-4.220. of the Frederick County Zoning Ordinance, Nonconforming Structures., Section 1-19-4.220 (C) of the Code allows the Board of Appeals to grant a variance to expand a nonconforming portion of an existing nonconforming structure only if he proposed expansion does not for the portion of structure only if the proposed expansion does not: ::(1) Increase the original footprint of the nonconforming portion of the structure; (2) Extend farther into the required setback(s) than the existing nonconforming portion(s) of the nonconforming structure; or (3) Include the construction of a nonconforming porch, enclosure of an existing nonconforming porch, or the addition of stories on top of a nonconforming porch.

Location: The Property is described as, 9708 Thompson Drive, Ijamsville, MD 21754 Tax Map 0096, Parcel 0136, Zoning, Agricultural (A), Size .98 Acres.

Planning Region: Urbana

Zoning District: Agricultural (A)

Comp. Plan Designation: Rural Community

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

Background: Sec.1-19-4.220 (C) Nonconforming Structures

All portions of the existing structure are non-conforming due to the required structure setbacks of 25' for road right of way and the Ag zoning district setback of 40', therefore 65' from the centerline of Thompson Drive to the north. Expanding the original building footprint is not permitted because non-conforming structures cannot be permitted unless under Section 1-19-4.220.C. (Attachment 1)

Proposal:

Applicant proposes to remove / demo the entire non-permitted rear addition (see demo plan) built by the previous owners without in order to satisfy the current zoning requirements. All future alternation / construction as shown in the proposed plan will be properly permitted and comply with the Code.

Due to the Ag zoning district setback restrictions, the Applicant cannot increase the original footprint of the nonconforming portion of the structure. Therefore, the Applicant is requesting a variance under 1-19-4.220.C to (1) add 190 sq. ft. above the existing den to proportionately space out the 3 existing bedrooms, (2) add a full bath on the first floor, (3) change the existing front porch from flat to gable roof and (4) adjust elevation of the existing rear wall and pitch break to a height / slope that would allow proper drainage for the roofs to protect the existing structure that was originally built in 1895. (Attachment 2)

The Applicant is requesting approval by the Board of Appeals to grant a variance to expand nonconforming portions of a nonconforming structure with no increase of the building footprint in such a way that the expansion does not extend farther into the required setback in accordance with Sec. 1-19-4.220. Nonconforming Structures, Section 1-19-3.220 Variances, and Section 1-19-6.100 Design Requirements of the Frederick County Zoning Ordinance.

§ 1-19-3.220 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 states that he understands this requirement.

- (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 he was directed by zoning staff to the Board of Appeals process by the Frederick county Division of Planning after refusal.

- (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 special conditions and circumstances exist in that the entire residence is unique in that it is a non-conforming structure that exists within the building set back.

(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 this circumstance is not the result of any action taken by the Owner/Applicant.

- (b) The literal interpretation of the provisions of Chapter 1-19 of the Frederick County Code would result in unreasonable hardship and deprive the applicant of rights commonly enjoyed by other properties in the same district under terms of Chapter 1-19 of the Frederick County Code; and

The Applicant states that without the new legislation that allows the BOA to approve his request, he would not be able to expand his structure outward or upward. Most homes enjoy the ability to expand or at least apply to expand. This in the past, had not been possible.

- (c) That granting the variance will not confer on the applicant any special privilege that is denied by Chapter 1-19 of the Frederick County Code to other lands or structures in the same district; and

The Applicant states that the granting of this variance would not confer any special privilege, on the owner.

- (d) That the granting of the variance will be in harmony with the general purpose and intent of Chapter 1-19 of the Frederick County Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The Applicant states that the variance will be in harmony with the neighborhood and with the intent of Chapter 1-19. It will not be injurious to the neighbors and will not be detrimental to the public welfare. This application does not interfere or impact the use of any other property.

- (D) In granting the variance, the Board of Appeals may prescribe appropriate conditions and safeguards in conformity with Chapter 1-19 of the Frederick County Code. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, is a violation of Chapter 1-19 of the Frederick County Code.

The Applicant states that he understands this requirement.

- (E) Under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of Chapter 1-19 of the Frederick County Code in the zone involved, or any use expressly or by implication prohibited by the terms of Chapter 1-19 of the Frederick County Code in said zone.

The Applicant states that he understands this requirement.

- (F) Except as specified in § [1-19-4.220](#)(C), the Board of Appeals shall not grant a variance to a nonconforming structure for the portion of structure determined by the Zoning Administrator to be nonconforming.

The Applicant believes that § 1-19-4.220 (C) applies to this case and that the Board of Appeals can grant a variance. See Below.

- (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 states that he understands this requirement.

§ 1-19-4.220 Nonconforming Structures

(A) A nonconforming structure is a structure lawfully existing January 24, 1977 or on the effective date of an amendment of this chapter that could not be built under the terms of this chapter by reason of restrictions on area, lot coverage, height, yards, or the characteristics of the structure or its location on the lot. A nonconforming structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

The Applicant states that portions of this structure lawfully existing prior to January 24, 1977 and that he is willing to demolish those parts that were wrongfully added and became nonconforming.

(1) The conforming portion of a nonconforming structure may be expanded or modified provided that the expansion or modification does not increase the portion of the structure determined by the Zoning Administrator to be nonconforming.

The Applicant states that he understands this requirement.

(2) The nonconforming portion of a nonconforming structure may be modified in accordance with the requirements of this chapter provided that the modification reduces the portion of the structure determined by the Zoning Administrator to be nonconforming, or if the modification meets the conditions set forth in subsection (C) below.

The Applicant states that he understands this requirement.

(3) Such structure once destroyed by any means will not be reconstructed unless:

- (a) It is in conformity with this chapter; or
- (b) The Board of Appeals grants a variance;

The Applicant states that he understands this requirement

(4) Such structure once moved, will thereafter conform to the regulations for the district to which it is moved.

The Applicant states that he understands this requirement

(5) This movement does not include minor shifting or settling of the structure from natural or accidental causes.

The Applicant states that he understands this requirement.

(B) Except as specified below in subsection (C), the Board of Appeals shall not grant a variance to a nonconforming structure for the portion of structure determined by the Zoning Administrator to be nonconforming.

The Applicant states that he understands this requirement.

(C) The Board of Appeals may grant a variance to expand a nonconforming portion of an existing nonconforming structure only if the proposed expansion does not:

(1) Increase the original footprint of the nonconforming portion of the structure; and

The Applicant states that he is seeking a variance to expand a nonconforming portion of an existing nonconforming structure but that the expansion does not increase the footprint because it goes up.

(2) Extend farther into the required setback(s) than the existing nonconforming portion(s) of the nonconforming structure; or

The Applicant states that the expansion does not extend farther into the required setback, because it is already entirely within the setback.

(3) Include the construction of a nonconforming porch, enclosure of an existing nonconforming porch, or the addition of stories on top of a nonconforming porch.

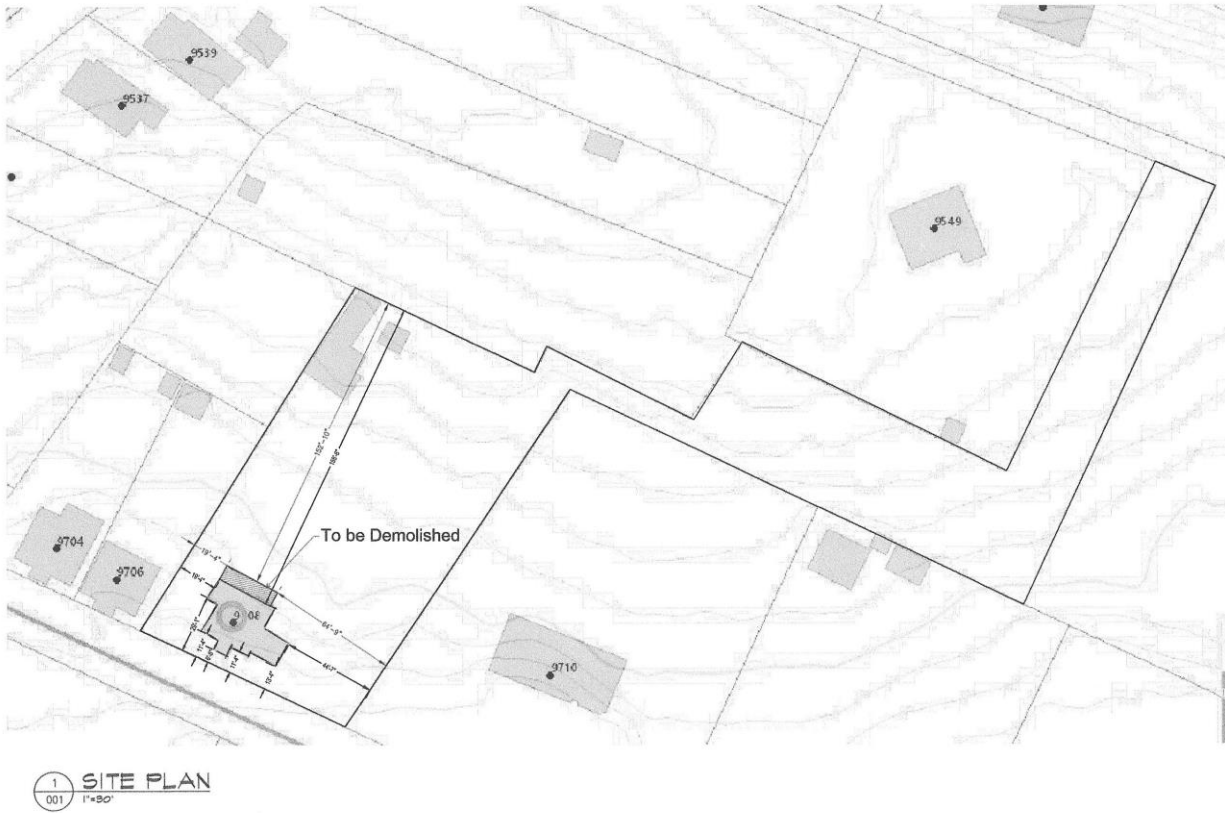
The Applicant states that he understands this requirement. The proposal does not include the construction of a porch, etc..

Actions Needed:

Staff requests that the Board review the general criteria for a variance under Section 1-19-3.220 Variances, Section 1-19-6.100 Design Requirements, and Section 1-19-4.220(C) render a decision on the Applicant's request.

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.

Attachment 1



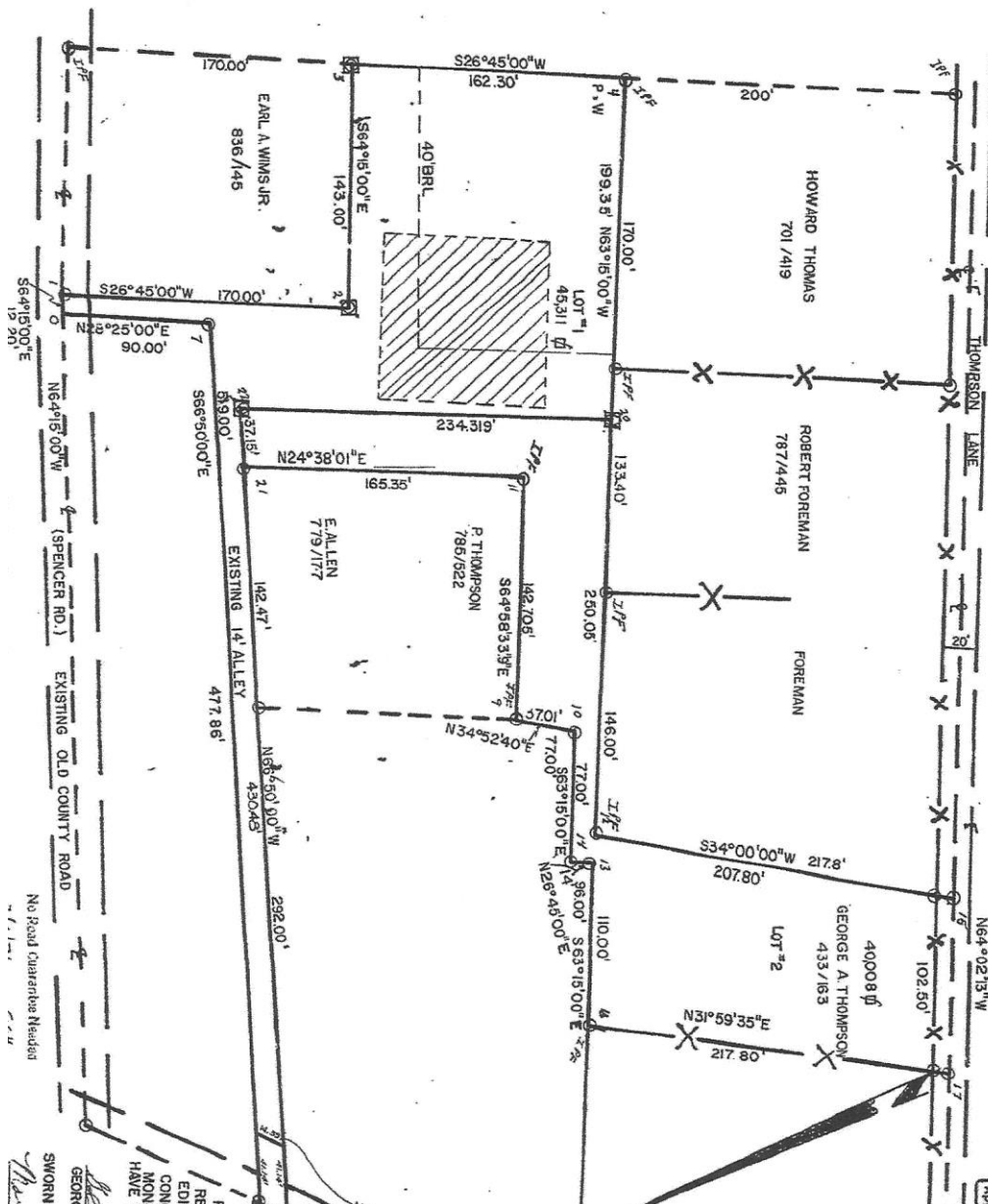
LOT¹ 44,725 sq.ft.
LOT² 2,40,000 sq.ft.
TOTAL AREA 85,319 sq.ft.
AREA OF PANHANDLE, 6690 sq.ft.
AREA OF RD. DEDICATION 576 sq.ft.
GEORGE A. THOMPSON
174 THOMPSON DRIVE
HAMSVILLE, MD. 21713

FORD SURVEYS
BOX 133
BUCKEYSTOWN, MARYLAND
PH 662-7466

SURVEYORS CERTIFICATE

I HEREBY CERTIFY THAT THE PLAN OF SUBDIVISION SHOWN HEREON IS CORRECT AND THAT IT IS A SUBDIVISION OF PART OF THE LAND CONVEYED BY DEED DATED DECEMBER 31, 1941 BY ALTON J. BENNETT AND WILFRED W. FLETCHER TO GEORGE A. THOMPSON AND MARGUERITE THOMPSON (his wife) AND FOUND AMONG THE LAND RECORDS OF FREDERICK COUNTY, MARYLAND IN LIBER 434, FOLIO 163.

11/19/73 *Wilbur L. Ford Jr.*
DATE
WILBUR L. FORD JR.
R. P. S. MD. 9008



GIS Maps

