



FREDERICK COUNTY BOARD OF APPEALS

December 15, 2022

CASE NUMBER: **B-22-35 (B273787) Johnson Variance**

REQUEST: Requesting a 6'6" variance from the required 40 ft. Front Building Restriction Line, in order to construct a 7' x 5' portico over the front entry way, in accordance with Sections 1-19-3.220 Variances, and 1-19-6.100 Design Standards, as provided for in the Frederick County Zoning Ordinance. If approved, the variance would create an 33'6" front building restriction line, rather than the required 40'. The property is .89 acres in size.

PROJECT INFORMATION:

ADDRESS/LOCATION: 8191 Middle Court, Middletown MD
TAX MAP/PARCEL: Tax Map 55, Parcel 0091
ZONE: Low Density Residential (R1)
REGION: Middletown
WATER/SEWER: NPS/NPS
COMP. PLAN/LAND USE: Low Density Residential

APPLICANT/REPRESENTATIVES:

APPLICANT: Brian Johnson
OWNER: Brian Johnson
ENGINEER: N/A
ARCHITECT: N/A
ATTORNEY: N/A

STAFF: Mike Paone, Zoning Planner

RECOMMENDATION: Based on the findings and conclusions in the staff report, Staff has no objections to the approval of this Application. The Applicant meets the standards and requirement contained in Sections 1-19-3.220 (Variance), and 1-19-6.100 (Design Standards), of the Frederick County Zoning Code. Approval of this Application would create a 33'6" front BRL.

ATTACHMENTS:

Exhibit #1: Site Plan
Exhibit #2: GIS Aerial of site
Exhibit #3: Comprehensive Plan designation
Exhibit #4: Environmental Features
Exhibit #5: Zoning Map

Background

The required setbacks for this Low Density Residential (R1) zoned property are front – 40', side – 10', rear – 30'.

The Applicant is requesting a 6'6" variance to a 40 ft. front building restriction line in order to construct, 7' x 5' portico over the front entry way, in accordance with Sections 1-19-3.220 Variances, and 1-19-6.100 Design Standards, of the Frederick County Zoning Ordinance. If approved, the variance would create a 33'6" front building restriction line, rather than the required 40". (Attachment 1)

Sec. 1-19-3.220 General Criteria - Variance:

Under the provisions of Section 1-19-3.220(C) of the Frederick 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.
- (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 County Zoning staff directed him to file with the Board of Appeals.

- (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 Applicant states that the hearing is scheduled December 15, 2022

- (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 somewhat unique, in part due to the cul-de-sac (semi-circular) shape, which causes making even a small change like adding a portico, need a variance.

- (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 semi circular shape of the Front BRL were established as part of the subdivision process before he purchased the home.

- (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; and

The Applicant states that he believes the request is not unusual and that adding the “portico” does not impact the character of the community or impact adjacent properties.

- (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 property is located on a quiet court within the community and does not bestow upon him any special privilege that others could not have in the community as well.

- (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 granting this Variance will be in harmony with Chapter 1-19 of the Frederick County Code and would have no detrimental effect on any adjoining properties.

- (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.

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 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 states that he is not asking for a variance to a nonconforming structure.

- (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.

RECOMMENDATION

Based on the findings and conclusions in the staff report, Staff finds that the proposed 6'6" variance to the 40 ft. front building restriction line in order to construct, 7' x 5' portico over the front entry way, complies with Section 1-19-3.220 (Variance), Section 1-19-6.100 (Design Standards) of the Frederick County Zoning Code. If approved, the variance would create a 33'6" front building restriction line, rather than the required 40".

1-19-3.220.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.

Exhibit #1: Variance Request Graphic

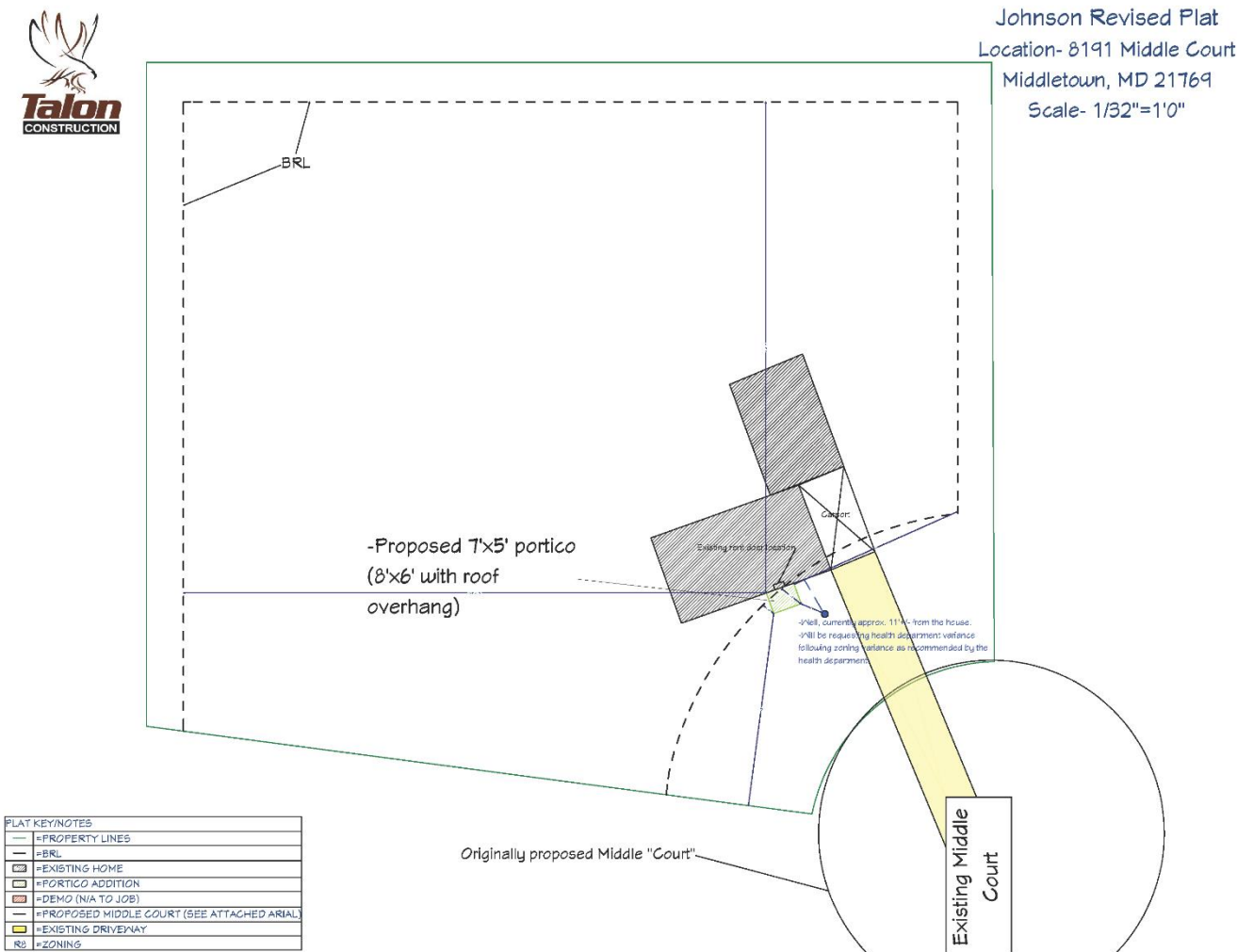


Exhibit #2: GIS Maps



