

BEFORE THE BOARD OF ZONING APPEALS  
TOWN OF WASHINGTON GROVE

IN THE MATTER OF:

JIM SNYDER  
201 Maple Road

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Case No. 2012-02

OPINION AND ORDER

Jim Snyder (petitioner), owner of a detached, single-family dwelling unit located at 201 Maple Road, requested a variance from the requirements set out in Article VII of the Washington Grove Code of Ordinances.<sup>1</sup>

The Board conducted a public hearing on this matter on September 15, 2012. At the conclusion of the hearing the Board closed the record and determined that petitioner's administrative appeal and application for variance must be denied. This opinion memorializes and finalizes that decision.

Based on the evidence admitted, the Board makes the following findings of fact and conclusions of law:

1. Notice of Hearing. The Board finds that a notice of public hearing to consider the petitioner's variance request was given in compliance with Section 11.311.<sup>2</sup>

2. Denial of Building Permit. Section 12.2(a)(1) states that this Board may grant a variance if the Town has denied the petitioner a permit for the building for which a variance is sought. Petitioner submitted an application to the Planning Commission for a building permit to enlarge and enclose an existing non-conforming carport. The carport is located in the front yard of petitioner's residence. Petitioner's application for a building

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<sup>1</sup> Section references are to Article VII of the Washington Grove Code of Ordinances.

<sup>2</sup> See Exhibit #1.

permit proposed to convert the carport into a garage by enclosing the existing 16 long foot structure and enlarging the length of the structure by an additional six feet. The six-foot extension would be accomplished by enlarging the structure toward the existing house and away from the front property line along Maple Road. The Commission denied the building permit application by letter dated March 15, 2012 for two reasons: (1) “the proposed enclosure of the encroaching carport into a garage would increase the visual impact of the existing encroachment in the front yard and the degree of non-compliance”; and (2) “[the] proposed enlargement of the existing building would mean more of the front yard would be encroached upon beyond that already encroached upon.”<sup>3</sup> In addition, this Board denied an administrative appeal by the petitioner and request for special exception after a hearing on June 9, 2012.<sup>4</sup>

3. Variance Request is From Development Standards of the Zoning Ordinance.

Section 12.2(a)(2) limits variance requests to relief from requirements of the Zoning Ordinance governing development standards, including the location of a building on a lot. Petitioner’s variance request is in compliance with Section 12.2(a)(2).

4. Ownership. The petitioner is the owner of 201 Maple Road and is therefore in compliance with Section 12.2(a)(3).

5. Not Contrary to the Public Interest. In order to grant a variance, petitioner must demonstrate that the variance, if granted, would not be contrary to the public interest. *See* Section 12.2(a)(4). Since the Board has concluded that petitioner has not satisfied the requirements of Section 12.2(a)(5), Practical Difficulty; Section 12.2(a)(6), Extraordinary Characteristics; and Section 12.2(a)(7), Uniqueness, the Board finds that it is unnecessary to address this factor, and, therefore, makes no finding under Section 12.2(a)(4).

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<sup>3</sup> See Exhibit #6.

<sup>4</sup> See Case 2012-01.

6. Practical Difficulty. A variance cannot be granted unless the petitioner demonstrates that complying with the zoning ordinance would be unnecessarily burdensome.<sup>5</sup> *See*, Sections 9.1 and 12.2(a)(5). In this case, the Board finds that complying with the zoning ordinance by constructing a garage at an alternative location on his property might be financially undesirable, but is not unnecessarily burdensome. Economic cost alone does not satisfy the practical difficulties test.<sup>6</sup> It may be convenient for the petitioner to locate an enclosed garage where the carport now stands, but the need for the garage at that location is neither substantial nor urgent. The Board concludes that the petitioner has failed to carry the burden of proof and persuasion that the variance request he makes, if denied, will result in a practical difficulty.

7. Extraordinary characteristics. Petitioners must demonstrate that the condition that forms the basis for granting the variance arises exclusively from the dimension, shape, topography, or other extraordinary characteristics of the lot. *See*, Section 12.2(a)(6). Petitioner's lot does not include extraordinary or unusual shape, dimension, topography, or other characteristic. Although a 25-foot-wide swath of land owned by the Town lies between the petitioner's property and Maple Road,<sup>7</sup> that swath also fronts other properties along Maple Road. Petitioner asserts that the lot is particularly narrow, so that he cannot build an accessory building anywhere except in the front yard. The Board, however, finds that he could construct a carport or garage in the backyard within the existing setbacks. As a result, the Board concludes that the petitioner has failed to carry the burden of proof and persuasion that the variance request he makes arises from the extraordinary characteristics of their property.

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<sup>6</sup> *See Montgomery County v. Rotwein*, 169 Md. App. 716 (2006).

<sup>7</sup> *See* Exhibit #5.

8. Uniqueness. The Board must find that the condition that forms the basis for granting the variance is peculiar to the lots in question and is not common to other lots in the vicinity. *See*, Section 12.2(a)(7). There are two conditions that could form the basis of finding Petitioner's lot unique – the narrowness of the lot and the 25 foot swath of land owned by the Town that lies between petitioner's property and Maple Road. The property at 203 Maple Road, next to petitioner's property, has the same square footage as petitioner's and approximately the same width. The 25-foot-wide swath owned by the town separates 201 Maple, 203 Maple and several other properties, from the road. Neither condition, therefore, is unique to petitioner's property.

The Board concludes that petitioner has failed to carry the burden of proof and persuasion that his property is peculiar and the basis for granting the variance is not in common with other lots in the vicinity.

**Decision.**

For the reasons set forth in this opinion, the Board denies petitioner's request for a variance.

10 / 17 / 12  
Date

Marc Hansen  
Marc Hansen, Chair  
Board of Zoning Appeals

Memorandum

To: Mayor and Council  
Town of Washington Grove

From: Marc Hansen, Chair *Marc Hansen*  
Board of Zoning Appeals

Date: October 14, 2012

Re: Zoning Ordinance—Variances—Amendment

In deciding a recent request for a variance under Section 12.2 of the Town's Zoning Ordinance, the Board encountered considerable difficulty in applying Section 12.2(a)(4), *Not Contrary to the Public Interest*, which is one of the factors the Board must find before granting a variance from the development standards of the Ordinance.

The Board respectfully suggests that the Town Council consider eliminating Section 12.2(a)(4) as a necessary requirement for permitting a variance. Determining whether a variance is or is not in the public interest is an extremely broad standard that lacks guidelines for its application. In the Board's view, if an applicant can demonstrate that all of the conditions for granting a variance have been met, the Board should be not empowered to deny the variance because the Board believes that, in any particular case, the variance application is contrary to the public interest. Determining what is in the public interest, the Board believes, is a legislative

function that should be exercised by the Council, not a judicial function to be implemented by the Board. *See. e.g. Sugarloaf Citizens Assoc. v. Gudis*, 319 Md. 558, 572, (1990).

The Board would be happy to discuss this issue with the Mayor and Council if that would be helpful. Thank you for your consideration of this request.

The Board of Zoning Appeals of Washington Grove  
Minutes

The Board of Zoning Appeals met on September 15, 2012, at 10:00 a.m. in the Town Hall to conduct a public hearing on the variance request filed by Jim Snyder, 201 Maple Road, to expand and convert his carport into a garage.

Satoshi Amagai, Christine Dibble and Marc Hansen sat as the Board.

After conducting a public hearing, the Board adopted by unanimous consent the attached Opinion and Order denying the variance.

Respectfully submitted,



Marc Hansen,  
Board of Zoning Appeals

Approved:

10/17/12

Date