



THE PRINCE GEORGE'S COUNTY GOVERNMENT


BOARD OF ZONING APPEALS

BOARD OF ADMINISTRATIVE APPEALS

COUNTY ADMINISTRATION BUILDING, UPPER MARLBORO, MARYLAND 20772
TELEPHONE (301) 952-3220

MEMORANDUM

TO: Jackie Brown, Director
PHED Committee

FROM: Barbara J. Stone, Administrator 
Board of Appeals

RE: Legislative Referral – CB-16-21

DATE: March 17, 2021

The Board of Appeals has reviewed Legislative Referral CB-16-21 and have the following comments:

(1) A specific parcel of land is physically unique and unusual in a manner different from the nature of surrounding properties with respect to exceptional narrowness, shallowness, shape, or exceptional topographic conditions.

- a. This proposed section eliminates the existing clause “or other extraordinary situations or conditions”.
- b. This clause has historically at times provided the necessary judicial room in deciding unusual cases of the request for variances that do not neatly fit in the other exceptional categories outlined in this section.

(3) Such variance is the minimum reasonably necessary to overcome the exceptional physical conditions;

- a. in Prince George's County, we believe the Board should continue to have discretion on a case-by-case basis in determining the reasonableness of a variance consistent with the provisions of the Zoning Ordinance. While the Board generally strives to provide the “minimum” relief warranted, circumstances may be protested where such a measuring standard would provide injustice to the property owner.
- b. Minimum reasonable is often debatable.

(5) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

- a. We do not believe that *McLean v. Soley*, 270 Md. 208, 213, 310 A.2d 783 (Md. 1973) requires a mandatory “will not be detrimental to the use and enjoyment for adjoining and neighboring properties” standard as related to the application of the requirements of practical difficulty or unreasonable hardship’ in granting in use variances.

Indeed, the court in establishing a three-prong criteria, included also the following standards: “(2) Whether a grant of the variance applied for would do substantial justice to an applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other owners. (3) whether relief can be granted in such a fashion that the spirit of the ordinance will be observed, and public safety and welfare secured.

- b. We believe that to be effective, the Board of Appeals, must have judicial flexibility by at times in matters in which the balancing interests, particularly those of adjoining parties, must be closely sorted out and a decision rendered consistent with the provisions of Section 270.
- c. The proposed section would essentially give veto power to an adjoining property owner over any request for a use variance based solely on the assertion and unnecessary imposition of the *subjective* “use and enjoyment” standard now being considered.
- d. The Board of Appeals already consistently considers, and indeed strongly encourages, at the hearings the testimony of all persons, including adjoining property owners, in adducing conflicting evidence in reaching a determination consistent with the provisions and spirit of Section 270.
- e. This proposed section would effectively eliminate the decision-making role of the Board of Appeal in contested matters or issues that are debatable.
- f. The County consists of a wide diversity of petitioners with property appeals over which the Board deliberates on a case-by-case basis. The delicate interests, no matter how large or small, of everyone is given considerable consideration by the Board at every hearing.
- g. It is unclear what the word “use” pertains to in the proposed language of the section.