

IN THE MATTER OF

BEFORE THE CECIL COUNTY

THE APPLICATION OF

BOARD OF APPEALS

GARY M. SLAGLE
GENERAL CONTRACTOR, INC.
(Variance)

CASE NO.: 3606

OPINION

Application of Gary M. Slagle General Contractor, Inc. (“Slagle” or the “Applicant”) for a ten (10) foot front yard setback variance for construction purposes on real property located at Lot 6, Hickory Road, Perryville, Maryland 21903, which is designated as Parcel 383 on Tax Map 35, Fifth Election District, Cecil County, Maryland. The subject property is presently zoned Low Density Residential (LDR), and is owned by George Thomas and Vivian Thomas.

Under the provisions of Article XVII, Part I, Section 306, Paragraph 1 of the Ordinance, variances (as defined in Article II), may be granted by the Board of Appeals. Paragraph 2 of Section 306 requires the Board to examine all facts of the case and render a decision based upon the following criteria:

A. The variance request is based upon a situation where, because of special circumstances, a literal enforcement of the provisions of the Ordinance would deprive the applicant of a right commonly enjoyed by other parties in the same zone under the terms of this Ordinance.

B. Special conditions and circumstances exist that are peculiar to the land, buildings or structures involved, and that are not applicable to other lands, buildings, or structures in the same zone, such conditions and circumstances not being the result of actions by the applicant.

C. The granting of the variance will not confer upon the applicant any special privileges that are denied by this Ordinance to other properties in the same zone.

D. The variance request does not arise from any condition to land or building use, either permitted or non-conforming, on any neighborhood property.

In addition, the Board may not grant a variance request in the Critical Area District unless the decision is based on the following additional criteria:

(1) Special conditions or circumstances exist that are unique to the subject property or structure and a strict enforcement of the provisions within the Critical Area District would result in unwarranted hardship that is not generally shared by owners of property in similar management areas (i.e., IDA, LDA, RCA) of the Critical Area.

(2) Strict enforcement of the provisions within the Critical Area District would deprive the property owner of rights commonly shared by other owners of property in similar management areas within the Critical Area District.

(3) The granting of a variance will not confer upon an applicant any special privilege that would be denied to other owners of like property and/or structures within the Critical Area District.

(4) The variance request is not based upon conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels.

(5) The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area District, and that the granting of the variance will be consistent with the spirit and intent of the County's Critical Area Program and associated ordinances as well as state law and regulations adopted under Subtitle 18 of the Natural Resources Article and COMAR 20.01.

(6) Greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance.

Applicant is the building contractor for George Thomas ("Thomas"), the Property owner. This is the Applicant's second application for a front yard setback variance on the Property; in this respect, the Applicant appeared before the Board in April, 2012, and requested a fifteen (15) foot front yard setback variance. At the April, 2012 Board hearing, the Applicant testified that Thomas is the owner of two adjacent lots; one of the two lots is improved by a single family dwelling, while the second lot (the Property at issue here), is presently unimproved. The Applicant further testified that Thomas would like to construct a garage for storage on the unimproved lot (e.g., on the Property), and that the proposed garage would be eight hundred sixty four (864) square feet in size. The Applicant stated that the design layout would place the garage five (5) feet off the back of Hickory Road, and that in this location, the proposed structure would have the least amount of interference with trees on the Property. The Applicant further testified that Hickory Road is a paper road that has not been opened, and that the proposed garage would be close to the existing dwelling on the Thomas' other lot. The Applicant testified that there would be no driveway or sidewalk to the proposed garage; the plans call for construction of the garage structure only, and neither a sidewalk or driveway are necessary as the proposed structure will provide storage for the Thomas' boats, jet skis, etc. The Applicant testified that Thomas primary residence is in California, that the local property is in the nature of a summer home, and that the proposed garage is intended for storage of items that Thomas cannot easily transport to and from California. According to the Applicant, Thomas requests the variance in order to provide sufficient space for

storage and an area to work on the boats, jet skis, etc. The Applicant testified that Thomas needs plenty of room in the proposed garage so that the items do not require storage inside the dwelling. The Applicant stated that the proposed structure would have a concrete floor inside, siding on exterior walls, and a metal roof; according to the Applicant, there would be no additional impervious surface to the exterior of the proposed garage, only grass. In a written Opinion, the Board denied the request for a fifteen (15) foot front yard setback.

The Applicant now requests a ten (10) foot front yard setback variance. The Applicant and Thomas appeared before the Board on June 26, 2012, and Thomas offered the following testimony as supplement to the evidence and testimony entered at the Board's April, 2012 hearing: Thomas testified that Lot 50 has been in his family since the 1920's, and that he constructed a residential dwelling on Lot 50 in 2006. In 2009, adjacent Lot 383 became available; at that time, Lot 383 was overgrown, and Thomas saw Lot 383 as a good place to build an accessory garage to the dwelling on Lot 50. According to Thomas, construction of the accessory garage on Lot 383 would allow him to build close to the paper road, and to preserve trees. Thomas further testified that Lot 383 is located behind Lot 50, and that the proposed garage would not obstruct his neighbors' view. Thomas testified that he intends to leave grass around the garage, with no driveway paving, as the structure will not be frequently used for ingress or egress.

No one appeared in opposition to the application. Joe Carrabetta, 1611 Carpenters Point Road, Perryville, Maryland 21902, who initially appeared in opposition at the April, 2012 Board hearing, this time appeared and testified in favor of the ten (10) foot front setback variance. More specifically, Mr. Carrabetta testified that he commends Thomas

for making a reasonable accommodation, and supports a ten (10) foot front yard setback variance within the envelope of the house.

Diane Carrabetta, 1611 Carpenters Point Road, Perryville, Maryland 21902, also appeared in favor of the application. Like Mr. Carrabetta, Mrs. Carrabetta also testified at the April, 2012 Board hearing in opposition to a fifteen (15) foot front yard setback variance. Mrs. Carrabetta now supports a ten (10) foot front yard setback variance, provided that there are no encroachments in the right of way.

Charlie Bowman appeared in favor of the application, and testified that he is the owner of adjacent lots, that the garage will not be an unsightly view for anyone, and that he strongly supports the application.

Brad Lutz appeared in favor of the application, and testified that most homes in the area have no setback, that the proposed structure is consistent with the surrounding neighborhood, that there are few wooded areas in the neighborhood and that he supports the application because it would preserve trees.

From the evidence presented the Board is satisfied that the criteria set forth in Section 306 has been met, and makes the following findings:

1. The variance request is based upon a situation where, because of special circumstances, a literal enforcement of the provisions of the Ordinance would deprive the applicant of a right commonly enjoyed by other parties in the same zone under the terms of this Ordinance. Competent testimony demonstrates that the proposed garage is consistent with the area, and that the proposed structure will be located behind Lot 50, which is owned by Thomas, and will not obstruct his neighbors' views. Competent evidence also demonstrates that other property owners in the area have constructed with

little or no setbacks. Special circumstances, specifically, the Applicant's desire to build close to his existing dwelling and to minimize impervious surface and preserve natural growth by not installing a driveway or walkway, would deprive Thomas the ability to construct the proposed garage in its proposed location if the variance is not granted.

2. Special conditions and circumstances exist that are peculiar to the land, buildings or structures involved, and that are not applicable to other lands, buildings, or structures in the same zone, such conditions and circumstances not being the result of actions by the applicant. The Property is unimproved, and is one of the few areas of wooded land in the neighborhood. Construction of an accessory structure, rather than a dwelling, on the Property, will allow for the retention of the wooded character of the Property, and the Applicant's proposed construction plan would reduce impervious surface area by maintaining grass around the exterior of the structure, with no driveway or walkway. The retention of the woods and pervious surface is due to the close proximity of the proposed structure to the existing dwelling on Lot 50, and the paper road, which allows for access, ingress and egress without the need for impervious surface. Without the requested variance, the Applicant would not be able to build in the proposed location on the Property.

3. The granting of the variance will not confer upon the Applicant special privileges that are denied by this Ordinance to other properties in the same zone. Competent testimony demonstrates that other properties in the neighborhood are improved by structures that provide for little or no setback; in addition, the proposed structure will not block the neighbors' views, and cannot encroach on the paper road.

4. There is no evidence that the variance request arises from any condition to land or building use, either permitted or non-conforming, on any neighborhood property.

In addition, the Board finds that:

1. Special conditions or circumstances exist that are unique to the subject property or structure and a strict enforcement of the provisions within the Critical Area District would result in unwarranted hardship that is not generally shared by owners of property in similar management areas (i.e., IDA, LDA, RCA) of the Critical Area. As stated above, Competent testimony demonstrates that the proposed garage is consistent with the area, and that the proposed structure will be located behind Lot 50, which is owned by Thomas, and will not obstruct his neighbors' views. Competent evidence also demonstrates that other property owners in the area have constructed with little or no setbacks. Special circumstances, specifically, the Applicant's desire to build close to his existing dwelling and to minimize impervious surface and preserve natural growth by not installing a driveway or walkway, would deprive Thomas the ability to construct the proposed garage in its proposed location if the variance is not granted. It follows then that strict enforcement of the provisions within the Critical Area District would deprive the Property owners of rights commonly shared by other owners of property in similar management areas within the Critical Area District. Of note, neither the Critical Area Commission or the MDE-NFIP Office are opposed to this variance.

3. As set forth above, the granting of a variance will not confer upon an applicant any special privilege that would be denied to other owners of like property and/or structures within the Critical Area District.


4. The variance request is not based upon conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels.

5. There is no evidence that the granting of a variance here will adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area District, and the Board finds that the granting of the variance will be consistent with the spirit and intent of the County's Critical Area Program and associated ordinances as well as state law and regulations adopted under Subtitle 18 of the Natural Resources Article and COMAR 20.01.

6. There is no evidence that greater profitability or lack of knowledge of the restrictions underlie the variance requested here. The Applicant could, ostensibly, seek to construct a dwelling on the Property; instead, Thomas proposes to construct a garage structure, which is a less profitable use of the Property.

For the reasons stated, by unanimous vote, the Board is satisfied that the requirements of Section 306 has been met, and the application for a ten (10) foot front yard setback variance is therefore APPROVED.

7/24/12
Date


Mark Saunders, Acting Chairperson

*** David Willis, Chairperson, Cecil County Board of Zoning Appeals, recused himself from hearing this case and did not participate in making or otherwise join in this decision.

Received

CONNECTED w/ Permit # 2012-08332

MAY 17 2012

BOARD OF APPEALS APPLICATION
CECIL COUNTY, MARYLAND

MEET. MONTH: June 2012
FILE NO. 3606

Cecil County Office
of Planning & Zoning

REQUEST IS FOR:
DESCRIPTION RENEWAL ()
SPECIAL EXCEPTION ()
VARIANCE (X)
APPEAL ()

DATE FILED: 5/17/12
AMOUNT PD: \$ 200.00
ACCEPTED BY: [Signature] CR# 1425

A. APPLICANT INFORMATION

Mail TO →

Gary M. SLAGLE, General Contractor, Inc.
APPLICANT NAME - PLEASE PRINT CLEARLY
131 Chilos RD ELKTON MD 21921
ADDRESS CITY STATE ZIP CODE
[Signature] (410) 398-5470
APPLICANT SIGNATURE PHONE NUMBER

B. PROPERTY OWNER INFORMATION

Mail TO →

George & Vivian Thomas
PROPERTY OWNER NAME - PLEASE PRINT CLEARLY
12 N Cherry Lane, Perryville, MD 21903
ADDRESS CITY STATE ZIP CODE
[Signature] 408-313-9052
PROPERTY OWNER SIGNATURE PHONE NUMBER

C. PROPERTY INFORMATION

Lot 6 Hickory Rd 05 053617
PROPERTY ADDRESS ELECTION DIST. ACCT. NUMBER
35 22 383 6 .103 LDR
TAX MAP # BLOCK PARCEL LOT # ACRES ZONE

D. PURPOSE OF APPLICATION - Indicate reasons why this application should be granted. (attach separate sheet if necessary)

We are requesting a 10' front set-back
variance off Hickory Rd. This would place
the garage 10' off Hickory instead of 20'
On an attached sheet, PLEASE submit a sketch of the property indicating the proposed project and distances from the front, side and rear property lines and the dimensions of the project.

F. LAND USE DESIGNATION

Is property in the Critical Area? YES NO
If yes, Pertinent provision of the Chesapeake Bay Critical Area Program: _____
Is property in the 100 year Floodplain? YES NO
Is property an Agricultural Preservation District? YES NO

If property is located in the Critical Area, all provisions and requirements must be met as outlined in Article XVII, Part I, II & III of the Zoning Ordinance.

PROVISION OF ZONING ORDINANCE Section 306

SPECIAL EXCEPTION RENEWAL - PREVIOUS FILE NO. & CONDITIONS FOR APPROVAL: N/A

I. SPECIAL EXCEPTION FOR A MANUFACTURED HOME - Please fill out the following information:

N/A

Will unit be visible from the road? _____ If yes, distance: _____
Will unit be visible from adjoining properties? _____ If yes, distance: _____
Distance to nearest manufactured home: _____ Size/Model/Year of Unit: _____
Number of units on property at present time: _____

Permit # 201208882
HICKORY ROAD

(50' WIDE)

No Driveway
No Sidewalk

NORTHERLY 60.00±

X. MH
P=5.00
m=-5.21

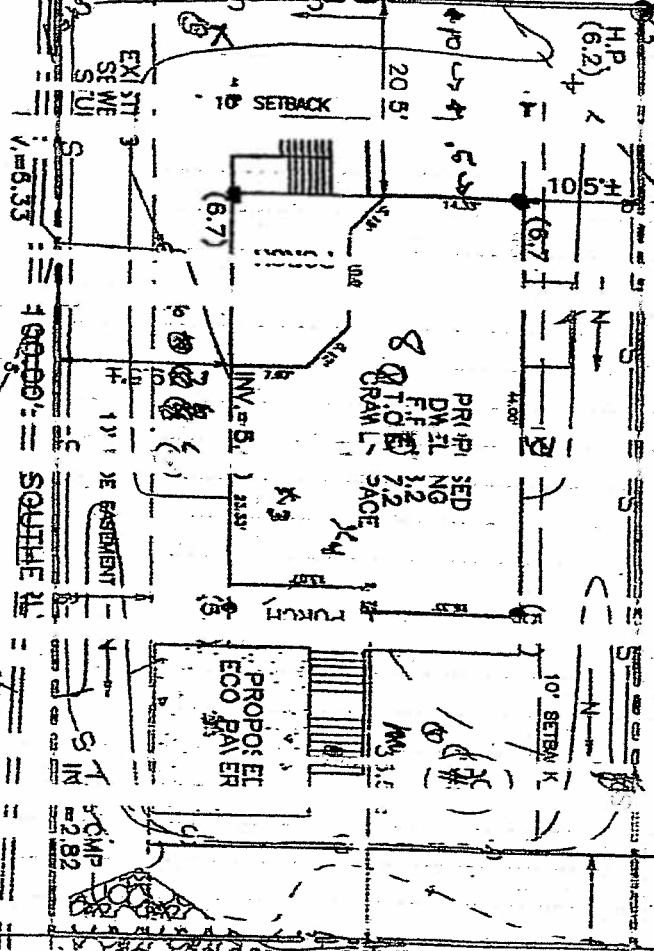
24' x 36'
864 Sq Ft

LOT #1

LOT #2

LOT #3

LOT #4



MULBERRY LANE

(20' WIDE)

EX. LAWN
BASIN
30" CMP

EXISTING
RAP
1" CMP
V=2.67
2" CMP
V=2.61

CHERRY LAKE

(20' DE)

E. MH
TC=6.08
INV=-6.14

10' WIDE A.L. WAY



Subject property

File # 3606

~~George & Vivian Thomas~~

~~Map 35 / Parcel 383~~

lot 60