

**APPLICATION OF
DEBRA MOULTON
FOR A VARIANCE**

*** BEFORE THE
* BOARD OF APPEALS
* TOWN OF CHARLESTOWN**

* * * * *

OPINION

Application of Debra Moulton, for her real property located at #15 Louisa Lane, Lots 1 & 2, Charlestown, Maryland 21914, also found on Tax Map 0500, Parcel 343. Zoning Designation R-3, High Density Residential District. Applicant is requesting a variance from the Town of Charlestown Table of Lot, Yard, Lot Coverage and Height Requirements requiring that a Single-Family Detached Residence within Residential R-3 District maintain a minimum thirty foot (30') rear yard setback. Applicant requests that a fourteen foot (14') variance be granted to permit the construction of a deck on the back of the residence.

The authority of the Board of Appeals to hear and grant such a request is found in the Town of Charlestown Zoning Ordinance § 175-40(C), which states:

“The Board of Appeals shall have the following powers and duties...to authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary hardship.”

A variance from the terms of within the Ordinance shall not be granted by the Board of Appeals unless and until a written application for a variance is submitted demonstrating:

(a) That social conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district;

(b) That literal interpretation of the provision of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter;

(c) That the special conditions and circumstances do not result from the actions of the applicant; and

(d) That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures or buildings in the same zone;

Further, pursuant to the Town of Charlestown Zoning Ordinance § 175-40(C)(1)(g), a variance from the terms of within the Ordinance shall not be granted by the Board of Appeals unless and until:

(a) A completed application form for a variance is submitted which demonstrates the applicability of the above criteria. In addition, requests for variance in the Critical Area Overlay District O shall not be heard unless the state's Critical Area Commission has received a copy of the variance request at least two weeks prior to the scheduled public hearing.

(b) The Board of Appeals shall find that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of land, building or structures. In making this determination for variance requests in the Critical Area Overlay District O, the Board of Appeals shall consider the following as tantamount to a minimum variance:

(1) That the granting of a variance to the yard and/or Buffer requirements results in new structures or impervious surfaces being located as far back from mean high water, tidal wetlands or tributary streams in the Critical Area as is feasible; and

(2) That the applicant takes steps to mitigate impacts, insofar as possible, including reforestation on the site to offset disturbed forested or developed woodlands on at least an equal area basis; afforestation of areas of the site so that at least 15% of the gross site is forested; and implementation of any mitigation measures which relate to habitat protection areas, as delineated in the Charlestown Critical Area Program, and recommended by state agencies are included as conditions of approval.

(3) The Board of Appeals shall further find that the granting of the variance will be in harmony with the general purpose and intent of this chapter, shall not result in a use not permitted in the zone in which the property subject to variance is located, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

(4) For variances in the Critical Area Overlay District O, the Board of Appeals shall find that the granting of the variance will be in harmony with the general purpose and intent of this chapter and the Charlestown Critical Area Program, shall not result in a use not permitted in the management area (i.e., IDA, LDA or RCA) or an increase in the number of permitted dwelling units (i.e., density limits) in which the property subject to the variance is located, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

(5) In addition and to the extent possible based on best available information, all property owners immediately contiguous to the application shall be notified by certified mail and furnished a copy of said application.

Under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of this chapter in the zone involved or any use expressly or by implication prohibited by the terms of this chapter in said zone.

In granting the variance, the Board of Appeals may prescribe such conditions and safeguards as it deems appropriate which comply with the intent of this chapter and the Charlestown Critical Area Program.

Per the Town of Charlestown Table of Lot, Yard, Lot Coverage and Height Requirements, a Single-Family Detached Residence within Residential R-3 District shall maintain a minimum thirty foot (30') rear yard setback. Applicant submitted an application to the Town of Charlestown requesting that a fourteen foot (14') variance be granted to permit the construction of a deck on the back of the residence.

Kevin Urick, Esq. appeared before the Board of Appeals on behalf of the Applicant, Debra Moulton. Mr. Urick proffered that the Applicant was ill and unable to attend the variance hearing. Mr. Urick proffered that he was authorized to proceed on the Applicant's behalf despite her absence. Mr. Urick argued that the construction of a deck is an accessory structure and not subject to the setback requirements. Mr. Urick proffered that, despite the application expressly stating that a deck was intended, that the Applicant actually intended to construct a screened-in porch with a roof.

An adjacent property owner, Ms. Rowe testified that she objects to the construction of either a deck or a screened-in porch with a roof. Ms. Rowe testified that she objects to having either a deck or an enclosed porch with a roof so close to her property line. Ms. Petersen also testified that she objects to having either a deck or an enclosed porch with a roof so close to the property line. The Town Administrator informed the Board of Appeals that the Critical Area

Commission was notified and that it has no requirements or conditions related to the subject proceeding.

The Board of Appeals does not find that the Applicant has established:

(a) That social conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district;

(b) That literal interpretation of the provision of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter;

(c) That the special conditions and circumstances do not result from the actions of the applicant; and

(d) That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures or buildings in the same zone;

Further, pursuant to the Town of Charlestown Zoning Ordinance § 175-40(C)(1)(g), a variance from the terms of within the Ordinance shall not be granted by the Board of Appeals unless and until:

(a) A completed application form for a variance is submitted which demonstrates the applicability of the above criteria. In addition, requests for variance in the Critical Area Overlay District O shall not be heard unless the state's Critical Area Commission has received a copy of the variance request at least two weeks prior to the scheduled public hearing.

(b) The Board of Appeals shall find that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of land, building or structures. In making this determination for variance

requests in the Critical Area Overlay District O, the Board of Appeals shall consider the following as tantamount to a minimum variance:

(1) That the granting of a variance to the yard and/or Buffer requirements results in new structures or impervious surfaces being located as far back from mean high water, tidal wetlands or tributary streams in the Critical Area as is feasible; and

(2) That the applicant takes steps to mitigate impacts, insofar as possible, including reforestation on the site to offset disturbed forested or developed woodlands on at least an equal area basis; afforestation of areas of the site so that at least 15% of the gross site is forested; and implementation of any mitigation measures which relate to habitat protection areas, as delineated in the Charlestown Critical Area Program, and recommended by state agencies are included as conditions of approval.


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Upon consideration of the facts, testimony, and law included within this opinion and all other relevant law not expressed herein but reviewed and considered, the Board of Appeals does

not find that the criteria of the Town of Charlestown Zoning Ordinance § 175-40 has been met. Specifically, the Board of Appeals does not find that any of the requirements of § 175-40 have been addressed, and is concerned about the inconsistent and varying types of construction alleged by Applicant in her application versus the testimony proffered. Therefore, the variance application requesting that a fourteen foot (14') variance be granted to permit the construction of either a deck or screened-in porch with a roof on the back of the residence is **DENIED**.

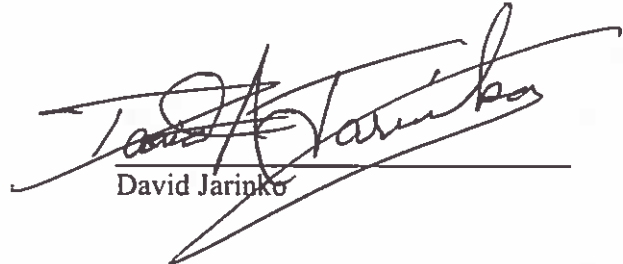
3/18/20
Date


Richard Mahan
Chairperson

3/18/2020
Date


Ursula Boudart

3-17-2020
Date


David Jarinko