

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
www.montgomerycountymd.gov/boa/
(240) 777-6600

Case No. A-6759

PETITION OF ESTEFANIA PURICELLI AND ANDREW CONNER

OPINION OF THE BOARD
(Hearing Held September 28, 2022)
(Effective Date of Opinion: October 5, 2022)

Case No. A-6759 is an application for variances needed for an existing barn and paddocks related to an equestrian facility. The existing barn requires a variance of ten (10) feet as it is within ninety (90) feet of a dwelling on another lot. In addition, the existing paddocks require a variance of seventy-five (75) feet as they are within twenty-five (25) feet of an existing dwelling on an abutting property. The required setbacks for the barn and paddocks are both one hundred feet (100) feet, in accordance with Sections 59.3.2.4.B.1.d and 59.4.4.4.B.2.a of the Montgomery County Zoning Ordinance.

The Board of Appeals held a remote hearing on the application on September 28, 2022. All participation was done via Microsoft Teams. Petitioners Estefania Puricelli and Andrew Conner participated in the proceedings in support of the requested variances.

Decision of the Board: **Variances GRANTED.**

PRELIMINARY MATTER

Because the requested variances were necessitated by and pertain to the same property for which Conditional Use Case No. CU 22-03 was granted in March of this year, the Petitioners have requested a waiver of the variance filing fee, in accordance with Rule 1.6 of the Board Rules of Procedure, because they had already paid the higher Conditional Use fee. The Board finds that the request is consistent with the Board's Rules of Procedure and can be granted.

EVIDENCE PRESENTED

1. The subject property is Lot 16, Block A, Avery Village Subdivision, located at 6001 Warm Springs Drive in Derwood, Maryland, 20855, in the RE-2 Zone. It has an area of two (2) acres. The property is roughly rectangular in shape, and is bordered on three sides by streets: Avery Road to the east, Warm Springs Drive to the south, and Amelung Lane to the west. The north side of the property abuts property that is located at 15805 Amelung Lane. See Exhibits 3 and 6.

2. Per SDAT, the subject property was developed in 1977, and was purchased by the Petitioners in 2019. See SDAT Printout. It is improved with a single family home and an existing barn. See Exhibit 3.

3. In 1987, a special exception for a private riding stable was granted to the then-owners of the subject property, allowing them to keep two horses on the property for personal use. See Case No. SE 87-1. In connection with that special exception, the previous owner obtained a variance to allow his barn to be located 32 feet from closest property line.¹ See Case No. A-1848. While the previous special exception has since been abandoned, the barn has remained a fixture on this property since that time. See Exhibits 3 and 5.

4. On March 2, 2022, Conditional Use Case No. CU 22-03 was granted to the Petitioners to permit an equestrian facility on the subject property, pursuant to Section 59.3.2.4 of the Zoning Ordinance. See Exhibit 5. Because the existing barn and the two pastures are all less than 100 feet from the nearest dwelling, the grant of the Conditional Use was conditioned, among other things, on the Petitioners obtaining variances from the setback requirements of Section 59.3.2.4.B.1.d and Section 59.4.4.4.b.2.a of the Zoning Ordinance. Section 59.3.2.4.B.1.d provides that "Each building, show ring, paddock, outdoor arena, and manure storage area must be located at least 100 feet from any existing dwelling on an abutting property." Section 59.4.4.4.b.2.a provides that "Any accessory building or structure used for the housing, shelter, or sale of animals or fowl other than a household pet must be a minimum of 25' from a lot line and a minimum of 100' from a dwelling on another lot."

5. The Petitioners' Statement of Justification ("Statement") explains that the existing barn is located 32 feet from the property line they share with their neighbors at 15805 Amelung Lane. The Statement explains that their neighbors' house is located approximately 25 feet from this shared property line, and approximately 90 feet from the barn. The Statement indicates that these neighbors support the grant of the requested variances, and includes a letter of support from these neighbors. See Exhibit 3.

6. The Statement states that the abutting property "has a similar barn," and that the neighborhood "has a rural character." The Statement further states that the Petitioners "have been told, but cannot confirm, that the original intent was to develop an

¹ When the original variance for this stable was granted, the Zoning Ordinance required a minimum property line setback of 50 feet. See Exhibit 3 and BOA Case No. A-1848.

equestrian community in Avery Village.” The Statement concludes that regardless of whether that is true, the Petitioners’ proposal “conforms to the rural character of the community and the objectives set out in the Master Plan.”

7. The Statement indicates that the Petitioners’ operation will not harm the environment, noting that “the property is not located in a special protection area, and [the Petitioners] do not expect any detrimental impact on forest stream buffers.” The Statement proceeds to indicate that the Petitioners “understand the responsibility to the environment that comes with both having a property and maintaining horses on the property,” and that they “will adhere to the appropriate manure management plan.” See Exhibit 3.

8. The Statement describes the anticipated activity at the Petitioners’ equestrian facility, describing a modest operation that should not have an adverse impact on neighboring property owners. The Statement states, in this regard, that the Petitioners might have birthday parties for their children or other similar gatherings. The Statement states that the Petitioners may offer riding lessons, but that “there would not be more than a few people on the property for such purpose at any given time,” adding that these lessons “would occur during the daytime.” Otherwise, the Statement indicates that the only expected activity would be “the occasional hay delivery, hauling of manure, or veterinarian/farrier visit,” again noting that “all such activities would occur during normal working hours.” See Exhibit 3.

9. The Statement states that the requested variances meet the test set forth in Section 59.7.3.2.E.2 of the Zoning Ordinance for the grant of a variance. Specifically, the Statement states that the Petitioners’ variance application “conforms to the Upper Rock Creek Master Plan, which emphasizes the protection of environmental resources and the preservation of rural character,” and that the barn for which variance relief is requested “was an original construction of the house,” was “built at the same time that the barn next door was built,” and “is part of the rural character of the neighborhood.” In addition, the Statement states that granting the variance will “continue the rural character of the Upper Rock Creek Master Plan,” and will “preserv[e] the neighborhood uniqueness of rural characteristics.” Finally, the Statement states, with respect to the impact of the proposed barn and pastures on neighboring properties, that “[h]aving horses in the property will not change any use or enjoyment of the abutting or confronting properties,” and that “[n]eighbors are willing to see horses back in the neighborhood.” See Exhibit 3.

10. At the hearing, Petitioner Andrew Conner testified that his house was built in 1977, and that a variance for the existing barn was granted in 1987. He testified that he did not know if the barn existed on the property prior to that time. He stated that he and Ms. Puricelli purchased the subject property in late 2018. He testified that they had spoken with their abutting neighbors, who would arguably be most affected by the grant of the variances, and that these neighbors support the grant of the variances. Mr. Conner testified that he had also spoken with their confronting neighbors across Warm Springs Drive.

11. Petitioner Estefania Puricelli testified that they did not own the subject property when the previous variance and special exception were granted. She testified that the property has not changed since that time, but that the law had changed, such that different variances are now required. Ms. Puricelli testified that it was her understanding that their neighborhood was originally intended to be a horse community, and that she believed the barns were built with the houses.

FINDINGS OF THE BOARD

Based on the binding testimony and the evidence of record, the Board finds that the requested variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59.7.3.2.E.2, as follows:

1. *Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59.7.3.2.E.2.a.v the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

The Board finds, based on the Statement, that the area in which the subject property is located has a rural character, and that the neighboring property also has a barn. In addition, the Board finds that the Petitioners' barn has been in place since at least 1987, at which time a variance was granted for its location, and that a special exception for a private riding stable previously existed on this property, again dating back to 1987. See Exhibit 3. Thus the Board finds that the grant of the requested variances, to allow the Petitioners to use their existing barn and paddocks/pastures for an equestrian facility, would substantially conform with the established historic or traditional development pattern of this street or neighborhood, in satisfaction of this element of the variance test.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the subject property was developed in 1977 and purchased by the Petitioners in 2019. Thus the Board finds that the locations of the existing barn and paddocks/pastures, which have been established since at least 1987, are not the result of any actions by the Petitioners, in satisfaction of this element of the variance test.

3. *Section 59.7.3.2.E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that the requested variances are minimal in that they allow the barn and paddocks/pastures to remain in the same location, relative to the shared lot line, that they have historically existed, and they allow conditional use Case No. CU 22-03, which has already been granted, to be implemented. The Board again notes that an earlier special exception (now lapsed) was granted in 1987 to allow a private riding stable on this property, and that a different variance was granted at that time to allow the existing

location of the Petitioners' barn. While the variances needed under the current Zoning Ordinance differ from the variance needed under the 1984 Zoning Ordinance, based on the Statement and the testimony of Ms. Puricelli, the conditions on the Petitioners' property remain the same as they were when the original variance was granted. In light of this, the Board finds that full compliance with the Zoning Ordinance would cause the Petitioners a practical difficulty, and that the requested variances are the minimum needed to overcome that difficulty, in satisfaction of this element of the variance test.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Board finds that allowing the existing barn and paddocks/pastures to remain in their current locations, and to be used in connection with the equestrian facility approved in conditional use Case No. CU 22-03, continues the traditional use of this property and, per the Statement, "conforms to the rural character of the community and the objectives set out in the [Upper Rock Creek] Master Plan." See Exhibit 3. Thus the Board finds that the requested variances can be granted without substantial impairment to the intent and integrity of this Master Plan, in satisfaction of this element of the variance test.

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

Based on the Statement, including the letter of support for the grant of the variances from the Petitioners' abutting neighbor, and based on the testimony of Mr. Conner, the Board finds that granting the requested variances will not be adverse to the use and enjoyment of neighboring properties, in satisfaction of this element of the variance test. See Exhibit 3. The Board notes, in support of this finding, that the barn and paddocks/pastures have long existed on this property, and that the Petitioners' conditional use application to reinstate an equestrian facility on this property was unopposed. See Exhibit 5.

Accordingly, the requested waiver of the variance filing fee, and the requested variances to permit the existing conditions, are **granted**, subject to the following:

1. Petitioners shall be bound by the testimony and exhibits of record

Based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Richard Melnick, Vice Chair, with Caryn Hines and Roberto Pinero in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



John H. Pentecost

Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 5th day of October, 2022.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.