

**ALLEGANY COUNTY BOARD OF ZONING APPEALS**

**IN RE: APPLICATION OF  
BERNARD MILBURN  
FOR A VARIANCE**

**\* Case No.: 938  
\* Hearing Date: 06/04/14**

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**FINDINGS**

This case came before the Allegany County Board of Zoning Appeals (the “Board”) upon Bernard Milburn’s request for variance of the setback requirements found in Section 360-87 A.(2) of the Allegany County Zoning Code.

A field inspection of the subject property was conducted by the members of the Board on May 29, 2014. The purpose of the field inspection was to familiarize the Board members with the site layout in order for them to develop an understanding as to where the proposed use would be located and to assess the ability to grant a variance in this particular situation.

At the hearing on June 4, 2014, the Board considered the attached list of exhibits which consisted of information gathered by the Division Chief and information provided by other agencies and individuals.

The proposed use will be located on the south side of Aster Ave, 300 feet south east of Ginger Street in Potomac Park, Allegany County, Maryland. The Applicant’s home is located on the same lot as the proposed use.

The proposed use is a garage. It will be a one story attached garage measuring 28' x 32' in dimensions. The Applicant plans to use the garage to store personal use vehicles. No commercial activities shall be conducted on the site.

The applicant acknowledged in a prior Request for Special Exception, Case 934, that construction on his project had already began absent the required permits by the county and he is now in a position of being unable to complete the project absent some Board of Zoning Appeals relief.

The Board considered testimony presented at the hearing in order to ascertain whether the proposed use and facts and circumstances surrounding this project would warrant the grant of a

variance. The Board's findings are as follows:

1. The Board of Appeals is specifically authorized to grant a variance in this type of case by Section 360-63 (C) of the Allegany County Zoning Code.

2. That the property upon which the proposed structure is to be placed is adjacent to an unimproved alley, consisting of a twenty (20) foot public right of way.

3. That Section 360-87 A.(2) of the Ordinance requires a minimum setback distance from alleys of fifteen (15) feet from the right of way or twenty (20) feet from the center line for all structures, including accessory structures.

4. That the evidence presented by the applicant clearly shows that the existing structure is located two (2) feet, eight (8) inches from the property line abutting the alley.

3. That the proposed use does not meet the minimum setback requirements and as a result is subject to Section 360-63 (C) of the Allegany County Zoning Code regarding modifications of the zoning regulations.

5. That as a prerequisite to the granting of a variance, the applicant must establish that the property whereon structures are to be placed is, in and of itself, unique and unusual in a manner different from the nature of the surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property.

6. That the evidence presented demonstrates that the applicant created his own hardship in this matter by failing to obtain a permit before construction began on his property and by constructing a larger structure than the original plans called for which resulted in the necessity of a variance to meet code requirements.

7. That the property layout is not peculiar nor unique and the proposed use could have been placed upon the property without need for a variance if the applicant had obtained sound advice and followed the existing zoning ordinance when laying out the project.

### **CONCLUSIONS**

As stated by the appellate court: "Self-inflicted or self-created hardship is never considered grounds for a variance. Where an applicant creates a nonconformity, the board lacks the power to grant a variance." *Cromwell v. Ward*, 102 Md. App 691, 651 A.2d 424 (1995). As a result, the

Board's hands are tied and it has no choice but deny applicant's request. As such, the Board voted at the conclusion of the hearing of June 4th, 2010, unanimously to deny the Applicant's request for a variance as to the setback requirements found in Section 360-87 A.(2) of the Allegany County Zoning Code.

**ATTEST**

**BOARD OF ZONING APPEALS**



By:   
**Julia Williams, Chairperson**

Copies to: See Attached List  
Attachment: Exhibits List