

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

ROGER MUNSON III  
Appellant

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Appeal No. AP2009-007

OPINION

This action is a request for a variance from the required 119 parking spaces to 78 spaces. The subject property is located at 11000 Bower Avenue, Hagerstown, Maryland, is owned by Jeffrey Crampton, and is zoned Business Local.

A public hearing was held before the Board on February 18, 2009. The Appellant offered evidence and testimony in support of the appeal. Opponents testified in opposition to the appeal.

FINDINGS OF FACT

The following findings of fact are made by the Board, based upon the testimony given and all data and other evidence presented, and upon a study of the specific property involved, as well as the neighborhood:

1. Appellant proposes operation of a restaurant/pool hall on the subject property.
2. The restaurant will be located in a building that has additional retail uses.
3. Proposed hours of operation are from 6 p.m. to 2 a.m., after adjacent retail uses close.
4. The size of the building will not change.
5. Customer capacity will be about 75 people.
6. The property currently has 78 existing parking spaces.
7. The restaurant's floor area and the pool hall floor area result in 119 required parking spaces per the Ordinance.

8. The size of the property is simply too small to yield the 41 required spaces.

9. Improvements to the existing parking area are planned.

10. In opposition to this appeal, concerns were raised about the nature of the use (a “late night” business) adjacent to a residential area and the potential for “overflow parking” to invade the residential neighborhood.

#### RATIONALE

This Board has authority to grant a variance upon a showing by the Appellant of practical difficulty or undue hardship. Sections 25.2(c) and 25.56, Zoning Ordinance for Washington County, Maryland. “Practical Difficulty” may be found by the Board when: (1) strict compliance would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome; and (2) denying the variances would do substantial injustice to the applicant and a lesser relaxation than that applied for would not give substantial relief; and (3) granting the variance would observe the spirit of the Ordinance and secure public safety and welfare. Section 25.56(a).

The proposed use is a reasonable and permitted use of the property. This variance is necessitated by the inadequate size of the property. Strict compliance would prevent this permitted use of the property while providing marginal benefits. The hours of operation of the restaurant are offset by the hours of operation of the other retail businesses, thus allowing for additional parking capacity for the restaurant. Furthermore, Appellant testified that additional spaces will be created when the parking area is renovated.

No evidence was presented that the proposed use was incompatible with the neighborhood; disruptive of neighbors’ quiet enjoyment of their properties; detrimental to surrounding property values; generative of excessive odors, dust, gas, smoke, fumes, vibrations, or glare; generative of traffic that would exceed the capacity of existing infrastructure; or that the proposal was an inappropriate use of land or structure. For these reasons, we believe that granting this variance observes the spirit of the Ordinance.

Based upon all of the testimony and evidence presented, this Board finds that the subject request does not adversely affect the public health, safety, security, morals, or general welfare, nor does it result in dangerous traffic conditions, or jeopardize the life and property of neighborhood residents. Accordingly, for the reasons set forth herein, this appeal is hereby GRANTED WITH CONDITIONS by a 5–0 vote.

CONDITIONS

1. Screening of the property shall be employed to the satisfaction of the Planning Commission.
2. Appellant will improve the condition of the existing parking area.
3. Appellant will make his best efforts maximize the number of available parking spaces within the footprint of the existing parking area.
4. Hours of operation shall be from 6 p.m. to 2 a.m.

BOARD OF APPEALS

By: Bert Iseminger, Chair

Issued: March 20, 2009