

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

DOMINICK J. PERINI
Appellant

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Appeal No. AP2009-017

OPINION

This action is a request for a variance from the minimum 40' front yard setback along Railway Lane to 13.6' for the construction of an ATM/mail center; for a variance from the required 25' street right-of-way along Railway Lane to 10' for a proposed freestanding sign; and for a variance from the required 25' street right-of-way along underpass way to 10' for a second proposed freestanding sign. The subject property is located at 1710 Underpass Way, Hagerstown, Maryland, is owned by the Appellant, and is zoned Business General. A public hearing was held before the Board on April 15, 2009.

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 owns the Plaza Office Building, a multi-tenant building filled with company and government agency offices.
2. Appellant seeks to construct a stand-alone, one story structure to house an automated teller machine and a mail center (collectively, the *Center*).
3. The Center will house USPS mailboxes and shipping drop boxes (i.e., for UPS, DHL, FedEx) and ATM.
4. The proposed location is the only site on the property that is feasible given the topography of the property and the placement of existing structures thereon.
5. The proposed signs will be placed within the grassy area between the public streets and the parking areas for the office building.

6. Strict compliance would result in the signs being in the parking areas, thereby interfering with site traffic and minimizing the visibility of the signs.

7. No opposition was presented to this request.

8. The Land Development Engineering Department takes no exception to this request contingent upon Appellant's addressing of two items set forth in the memorandum dated April 14, 2009.

RATIONALE

A variance may be granted upon a showing of practical difficulty or undue hardship. Sections 25.2(c) and 25.56. "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).

In this matter, we find that the Appellant has met his burden for the requested variances. The proposed use is a reasonable and permitted use of the property, and failing to grant the variances would serve no practical benefit. The proposed placement of the Center and the signs will not disrupt traffic flow on public streets or in the private parking area, nor will it impede motorists' sight distances. Strict compliance with the required setbacks would prevent the construction of the Center in a size and with a location that would make it useful to tenants and the public. 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 by a 5-0 vote. The Appellant shall comply with the two contingencies set forth in the Land Development Engineering Department memorandum

dated April 14, 2009.

BOARD OF APPEALS
By: Bert Iseminger, Chair

Issued: May 15, 2009