

**BOARD OF APPEALS**

**April 13, 2022**

**County Administration Building, 100 W. Washington St., Meeting Room 2000, Hagerstown, at 6:00 p.m.**

**AGENDA**

**DOCKET NO. AP2022-009:** An appeal was made by Nicholas & Kandy Schisler for a special exception to establish a resident business for construction company on property owned by the appellants and located at 20909 Netz Road, Boonsboro, Zoned Preservation.-**GRANTED WITH CONDITIONS**

**DOCKET NO. AP2022-013:** An appeal was made by Craig Wenger for a variance from the required 40 ft. front yard setback to 10 ft. for the construction of a replacement single-family dwelling due to tree damage on property owned by the appellant and located at 20402 Trovinger Mill Road, Hagerstown, Zoned Agricultural Rural.-**GRANTED**

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Pursuant to the Maryland Open Meetings Law, notice is hereby given that the deliberations of the Board of Zoning Appeals are open to the public. Furthermore, the Board, at its discretion, may render a decision as to some or all of the cases at the hearing described above or at a subsequent hearing, the date and time of which will be announced prior to the conclusion of the public hearing. Individuals requiring special accommodations are requested to contact Katie Rathvon at 240-313-2464 Voice, 240-313-2130 Voice/TDD no later than April 4, 2022. Any person desiring a stenographic transcript shall be responsible for supplying a competent stenographer.

The Board of Appeals reserves the right to vary the order in which the cases are called. Please take note of the Amended Rules of Procedure (Adopted July 5, 2006), Public Hearing, Section 4(d) which states:

Applicants shall have ten (10) minutes in which to present their request and may, upon request to and permission of the Board, receive an additional twenty (20) minutes for their presentation. Following the Applicant's case in chief, other individuals may receive three (3) minutes to testify, except in the circumstance where an individual is representing a group, in which case said individual shall be given eight (8) minutes to testify.

Those Applicants requesting the additional twenty (20) minutes shall have their case automatically moved to the end of the docket.

For extraordinary cause, the Board may extend any time period set forth herein, or otherwise modify or suspend these Rules, to uphold the spirit of the Ordinance and to do substantial justice.

Paul Fulk, Chairman  
Board of Zoning Appeals

**BEFORE THE BOARD OF APPEALS  
FOR WASHINGTON COUNTY, MARYLAND**

**NICHOLAS SCHISLER & KANDY SCHISLER**

**APPEAL No. AP2022-009**

**APPELLANTS**

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**OPINION**

Nicholas Schisler and Kandy Schisler (hereinafter collectively, "Appellants") request a special exception to allow the establishment of a resident business at the subject property. The subject property, owned by Appellants, is located at 20909 Netz Road, Boonsboro, Maryland, and is zoned Preservation. The Board held a public hearing on the matter on April 13, 2022.

The appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County, Maryland (hereinafter, the "Ordinance") and upon proper notice to the parties and general public as required.

**FINDINGS OF FACT**

Based upon the testimony given, all information and evidence presented, and upon a study of the specific property involved and the neighborhood in which it is located, the Board makes the following findings of fact:

1. Appellants own the subject property located at 20909 Netz Road, Boonsboro, Maryland (since 2007). The subject property is zoned Preservation (P).
2. The subject property is improved by a 2-story single-family dwelling comprising 1,809 square feet of above-grade living area, situated on 1.3 acres.
3. In 2016, Appellants received a County Zoning Certificate to establish and operate a "home occupation"<sup>1</sup> in an 800 sq. ft. accessory structure at the subject property, called "Nick's Masonry Construction" (hereinafter, the Business"). Since that time, the Business has grown and is no longer in compliance with the standards for a home occupation.
4. A special exception is required to operate a resident business in a home in the P zoning district (Ordinance, §3.3(1)(J)).

<sup>1</sup> Under the Ordinance (see §3.3(1)(J)), a "home occupation" is allowed as an accessory use in the P zoning district.

5. Appellants began operation of the Business 15 years ago.
6. Appellants testified the Business has evolved from construction to maintenance activities, which has necessitated the use of more space at the subject property.
7. Appellants testified they intend to use less than 5,000 sq. ft. for the Business, which will continue to be open on the same days and during the same hours as they have been to date, will have no employees other than themselves, all customer interaction is by phone, email, and/or off-site, will keep all tools and supplies will be kept in the old 800 sq. ft. structure, and will keep all equipment in the new (existing) 40' x 72' building. Appellants estimate that the equipment utilizes approximately 1,910 sq. ft. of floor space.
8. Appellants further testified they do not have a sign for the Business, no additional lighting will be installed, that 95% of prep work and material deliveries occurs off-site, and there will be no increase in noise, dust, odors, or traffic.
9. Appellants provided a written statement regarding the Business (which they read to the Board), and a boundary survey showing the location of the Business structures. Both items were received into the record.
10. A neighbor that lives directly across from the subject property testified that he has lived there for 26 years, has never had any issues with Appellants or their business activities, and supports the application.
11. One letter and two emails were received and read into the record from three neighbors within 0.1 miles of the subject property, all expressing support for Appellants and the Business.
12. The adjoining neighbor to the East of the subject property testified in opposition to the application. The neighbor testified that materials and equipment are located on the subject property approximately 56 feet from the West boundary of her property, that she is concerned about the effect on the Business on the value of her property, that other businesses on Netz Road are smaller and have little aesthetic impact, that Appellants' operations have outgrown the residential neighborhood, that large construction dumpsters are filled to the brim and are never emptied in a timely manner.
13. No other persons testified or submitted anything in writing in support of or in opposition to the application.



14. In response, Appellants' testified that the opposing neighbor has never brought her complaints to them; nevertheless, they are willing to erect and maintain a privacy fence along their the boundary they share to shield her view from the items on subject property.

#### **RATIONALE**

The Board has authority to grant a special exception pursuant to Section 25.2(b) of the Ordinance. A special exception is defined as "a grant of a specific use that would not be appropriate generally or without restriction; and shall be based upon a finding that the use conforms to the plan and is compatible with the existing neighborhood" (Ordinance, Article 28A).

Appellants provided testimony regarding the previous and current operations of the Business as set forth in the Findings of Fact. The Board discussed and considered said testimony given in support of Appellants' contention that the Business would not present adverse effects greater than other similar uses in the P district. The Board also read into evidence and considered the letter and emails from neighbors who are in support of Appellants' application. Finally, the Board considered the testimony from the most-affected neighbor who expressed opposition to Appellants' application.

The Board notes that there are several other small business in close proximity to the subject property. The Board also notes that operation of the Business moving forward appears to pose no increase in noise, odors, dust, lighting, or other sensory elements that might result in additional negative impacts to surrounding properties. However, the Board is concerned about the continuing visual impact from the Business on the most-affected neighbor. The Board notes with favor Appellants' offer to install and maintain a privacy fence along the shared boundary with said neighbor to offset this visual impact, and said neighbor's willingness to accept said fence as a solution.

The Board finds that the establishment of a resident business at the subject property will pose no greater "adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." *Schultz v. Pritts*, 291 Md. 1, 15 (1981). For all these reasons, the Board concludes that this appeal meets the criteria for a special exception, secures public safety and welfare, otherwise conforms to and upholds the spirit of the Ordinance, and is compatible with the existing neighborhood.

Therefore, Appellants' request for a special exception to establish a resident business at the subject property is GRANTED, by a vote of 5-0. Said variance is granted upon the conditions that: 1) Appellants will install and maintain (at their sole cost and expense) a privacy fence on their side of and parallel to the boundary line shared with the adjoining neighbor at 20917 Netz Road, Boonsboro, Maryland. Said fence will begin near the North end of said boundary line, a sufficient distance back from Netz Road so as not to obstruct or interfere with the sight lines when exiting or entering the driveway to said neighbor's property. Said fence shall extend along said boundary line from the point of beginning of the fence as noted above to a point no less than perpendicular to the southernmost vertical plane of the existing deck at the rear of said neighbor's dwelling. Said fence shall be of a height sufficient to shield said neighbor's view of the Business along the fence-line; and 2) operation of the resident business will be consistent with the testimony and evidence presented herein and in compliance with all other applicable government regulations.

BOARD OF APPEALS

By: Paul Fulk, Chair

**Date Issued: May 12, 2022**

Notice of Appeal Rights

Any person or persons, jointly or severally, aggrieved by any decision of the Board of Appeals, or any taxpayer, or any officer, department, board, or bureau of the jurisdiction, may appeal the same to the Circuit Court for Washington County within thirty (30) days, in a manner set forth in Md. Code Ann., Land Use, § 4-401.

**BEFORE THE BOARD OF APPEALS  
FOR WASHINGTON COUNTY, MARYLAND**

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**CRAIG WENGER**

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**APPEAL No. AP2022-013**

**APPELLANT**

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**OPINION**

Craig Wenger (hereinafter, “Appellant”) requests a variance from the required front yard setback of 40 feet to 10 feet, for construction of a replacement single-family dwelling on the subject property. The subject property is located at 20402 Trovinger Mill Road, Hagerstown, Maryland, and is zoned Agricultural (Rural). The Board held a public hearing on the matter on April 13, 2022.

The appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County, Maryland (hereinafter, the “Ordinance”) and upon proper notice to the parties and general public as required.

**FINDINGS OF FACT**

Based upon the testimony given, all information and evidence presented, and upon a study of the specific property involved and the neighborhood in which it is located, the Board makes the following findings of fact:

1. Appellant owns the subject property located at 20402 Trovinger Mill Road, Hagerstown, Maryland (since 1982).

2. Subject property is an irregularly shaped lot comprised of approximately 14,901 square feet, improved by an existing single-family dwelling (log cabin) of 665 square feet above-grade living area built in 1952, and zoned Agricultural (Rural) (A(R)). Appellant rents out the dwelling from time-to-time, but it is currently vacant.

3. The existing dwelling suffered significant damage on January 17, 2022, when a large tree fell on the middle of the roof (length-wise). Said damage has rendered the dwelling unsafe and uninhabitable, and the cost to repair the damage is far more than the dwelling is worth.

4. Appellant's situation is further complicated by the fact that the existing dwelling on the subject property does not meet current construction codes due to its age and type of construction; for example, the foundation is comprised of stacked stone and likely does not have proper footings for support of the structure. Thus, Appellant desires to construct a replacement single-family dwelling on the subject property.

5. The location of the existing dwelling exceeds the current required 40 foot front yard setback (which runs through the center of the dwelling) by approximately 24 feet.

6. Moving the proposed new dwelling to comply with the required 40 foot front yard setback is not feasible due to the topography of the subject property, which has a significant slope down from the rear of the existing dwelling. Moreover, the current limit of the 100-year flood plain is about 10 feet behind the rear of the existing dwelling.

7. Appellant proposes to move the location for the replacement dwelling further into the front yard setback by an additional 6 feet, with final placement exceeding the setback by 30 feet. This will allow sufficient room for construction equipment, avoidance of rock impediments when excavating and placing the foundation, and a better line-up with the existing septic easement.

8. Section 5A.5(a) of the Ordinance establishes the front yard setback for a single-family dwelling on lots in the A(R) Zoning District at 40 feet; thus, a variance is required to reduce the front yard setback on the subject property. Accordingly, Appellant has made such application therefor.

9.. Appellant provided the Board with a written statement setting forth the reasons for the requested variance, a picture showing the fallen tree on the existing dwelling, boundary line surveys showing location of the existing and proposed dwellings and the various distances to boundary lines, a floor plan for the proposed replacement dwelling, and an aerial view of the subject property with an overlay of the flood plain. All items were made a part of the record.

10. No other persons testified or provided written communications in support of or in opposition to the application.

11. An email was received and read into the record from a Plan Reviewer in the County Engineering Department stating that there were no engineering comments

and that the flood plain check reveals that the location of the proposed replacement structure will not be in the flood plain.

12. An email was received and read into the record from the Maryland Department of Health stating that: “The proposed structure cannot increase the number of bedrooms on the square footage of living space >665 sq. ft. The septic reserve area would have to have an approved perc test on the existing septic easement.”

#### **RATIONALE**

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship (Ordinance §§25.2(c) and 25.56).<sup>1</sup> “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 (Ordinance §25.56(A)).

“Undue hardship” may be found when: (1) strict compliance with the Ordinance would prevent the applicant from securing a reasonable return from or to make reasonable use of the property; and (2) the difficulties or hardships are peculiar to the property and contrast with those of other property owners in the same district; and (3) the hardship is not the result of the applicant’s own actions (Ordinance §25.56(B)).

Practical difficulty and undue hardship are the result of a property being unique. “‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.” *North v. St. Mary’s Cnty.*, 99 Md. App. 502, 514 (1994).

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<sup>1</sup> “When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive (“or”), Maryland court generally have applied the more restrictive hardship standard to use variances, while applying the less restrictive practical difficulties standard to area variances because use variances are viewed as more drastic departures from zoning requirements.” *Belvoir Farms Homeowners Ass’n, Inc. v. North*, 355 Md. 259, 276 n.10 (1999)(citations omitted).



In this case, Appellant provided justification and presented his case in a manner that implicates the criteria for both practical difficulty and undue hardship. In such a case, the Board need find only that Appellant made a showing that satisfies the criteria for either standard.

Appellant's testimony regarding the necessity to construct a replacement dwelling and why said dwelling needs to be located further into the front yard setback is compelling. It would be difficult (if not impossible), potentially hazardous, and very expensive to construct the replacement dwelling on the current foundation. Furthermore, the topography of the subject property and the encroachment of the flood plain at the rear of the property would pose additional significant construction challenges. Moving the replacement dwelling location an additional 6 feet forward appears to be the minimum necessary to avoid these obstacles.

In consideration of the foregoing and the Findings of Fact, the Board finds that strict compliance with the Ordinance would impose a practical difficulty upon Appellant, in that conformance would be rendered unnecessarily burdensome, that denying the variance would do substantial injustice to the applicant and a lesser relaxation than that applied for would not give substantial relief, and granting of the variance would observe the spirit of the Ordinance and secure public safety and welfare.

Therefore, the variance requested from the required 40 foot front yard setback to 10 feet on the subject property herein, is GRANTED, by a vote of 5-0. Said variance is granted upon the condition that the placement and construction of the replacement single-family dwelling on the subject property be consistent with the testimony and evidence presented herein and in compliance with all other applicable government regulations.

BOARD OF APPEALS

By: Paul Fulk, Chair

**Date Issued: May 12, 2022**

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