

**BOARD OF APPEALS**

**February 21, 2018**

**County Administration Building, 100 W. Washington St., Meeting Room 2000, Hagerstown, at 7:00 p.m.**

**AGENDA**

**DOCKET NO. AP2018-004:** An appeal made by Brett T. Chaney and Laura J. Leaven for a variance from the minimum 15 ft. left side yard setback to 8 ft. for the construction of a 30'x40' detached garage on property owned by the Appellant and located at 17557 Taylors Landing Road, Sharpsburg, zoned Preservation

**DOCKET NO. AP2018-005:** An appeal made by Conservit, Inc. for a variance from the minimum 100 ft. right side yard setback to 45 ft. for placement of a conveyor system on property owned by the Appellant and located at 18656 Leslie Drive, Hagerstown, zoned Industrial General

**DOCKET NO. AP2018-006:** An appeal made by Selena M. Tory Wilkes for a special exception to establish a banquet/reception facility, variance from minimum 100 ft. right side yard setback to 88 ft., variance from requirement to provide a durable, dustless surface for parking, and variance from required 233 parking spaces to 110 spaces for said banquet/reception facility on property owned by the Appellant and located at 16311 Kendle Road, Williamsport, zoned Residential Suburban

**DOCKET NO. AP2018-007:** An appeal made by Lee B. Worthington for a variance from the minimum 100 ft. left side yard setback to 30 ft. for construction of an agricultural structure on property owned by the Appellant and located at 14617 Barkdoll Road, Hagerstown, zoned Agricultural (Rural) and Rural Village

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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 Kathy Kroboth at 240-313-2469 Voice, 240-313-2130 Voice/TDD to make arrangements no later than February 12, 2018. 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.

Neal Glessner, Chairman  
Board of Zoning Appeals

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

**Brett T. Chaney & Laura J. Leaven  
Applicants**

**Appeal No. AP2018-004**

**OPINION**

This appeal is a request for a variance from the required 15' left side yard setback to 8' for the construction of a 30'x40' detached garage. The subject property is located at 17557 Taylors Landing Road, Sharpsburg, Maryland; is owned by the Applicant; and is zoned Preservation. The Board held a public hearing on the matter on February 21, 2018.

**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. The Applicants seek a 7' relaxation of the required 15' left side yard setback so that he can erect a 30'x40' pole barn on the subject property.
2. Mr. Chaney testified that he thought the property was in the Town of Sharpsburg and he applied the wrong setback standard.
3. The pad for the structure had been poured when he learned of the encroachment.
4. He testified that the driveway and septic lines on the property limit alternative placement of the structure and that strict compliance would hinder access to the barn.
5. The building will be used for storage and vehicle repair and maintenance.
6. A tree line and a fence will partially screen the building from the neighboring property.
7. Mr. Anderson, the most-affected neighbor, testified that he is not opposed to the structure but he does want it to meet the proscribed setbacks.
8. He credibly testified that he was concerned with noise and fumes emanating from

the building and their intrusion on his property given the encroachment, and the potential for a negative impact on the resale value of his property if the encroachment was permitted.

9. If the encroachment is allowed, the building would be approximately 25' from Mr. Anderson's dwelling.

10. In rebuttal, the Applicant remarked that the 6' high fence and tree line would obscure visibility of the building.

### **Rationale**

This Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 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 variance 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. § 25.56(A).

Before we may consider whether the Applicant demonstrated a practical difficulty, we must determine if the property is unique. In zoning analysis, "...[a] property's peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the ordinance's more severe impact on the specific property because of the property's uniqueness before any consideration will be given to whether practical difficulty or unnecessary hardship exists." *Cromwell v. Ward*, 102 Md. App. 691, 721 (1995).

In this case, there was no indication that the property was unique such that variance relief would be available. The Applicant mentioned that the topography of the property suggested placement of the structure as proposed, but there was no showing that its topography prevented placement of the structure at other locations on the property without the need for variance relief. Moreover, the location of the structure appears to be preferred for the convenience of the Applicant, as he points to easy access to the existing

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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 courts 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).

driveway, the location of the septic field, and his good-faith, albeit mistaken, understanding of the applicable setback requirement. “It is not the purpose of variance procedures to effect a legalization of a property owner’s intentional or unintentional violations of zoning requirements.” *Cromwell* at 721. Furthermore, self-created hardships cannot serve as the basis for a finding of practical difficulty. *Montgomery Cnty. v. Rotwein*, 169 Md. App. 716, 733 (2006).

We conclude that the Applicant could reconfigure the proposed location of the structure to achieve his aims without the need for variance relief. We also conclude that the testimony showed that the Applicant has done little, if anything, to address his neighbor’s concerns. We conclude that the requested variance relief is for the convenience of the Applicant on a property whose eligibility for variance relief has not been demonstrated because the Applicant has failed to demonstrate the uniqueness of the parcel. Therefore, this request for variance relief must fail.

Accordingly, this request for a variance is hereby DENIED by a vote of 3–1.

BOARD OF APPEALS  
By: Neal R. Glessner, Chair

Date Issued: March 23, 2018

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

**Conservit, Inc.  
Applicant**

**Appeal No. AP2018-005**

**OPINION**

This appeal is a request for a variance from the minimum 100' right side yard setback to 45' for the placement of a conveyor system. The subject property is located at 18656 Leslie Drive, Hagerstown, Maryland; is owned by the Applicant; and is zoned Industrial General. The Board held a public hearing on the matter on February 21, 2018.

**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. The Applicant seeks a variance to place a conveyor system on the subject property.
2. The conveyor is a stacking conveyor, used in the metal recycling process on the subject property.
3. Materials are transported or moved around the site with trucks and bulldozers.
4. The conveyor will allow shredded material to be moved by conveyor belt and deposited at its end terminal.
5. The conveyor will be 83' from the property line.
6. The most-affected property will be the Maryland Correctional Institute.
7. Since MCI is an institution for human care, the setback from the property line is enhanced to 100'.
8. The most-affected portion of the MCI compound is the area that houses the large field of solar arrays.

9. The closest building on the MCI compound will be 1,300' away.

10. In opposition, Jeremiah Weddle spoke of his concerns about noise and smoke coming from the subject property.

11. Gary Smith, of Garis Shop Road, also spoke in opposition to the request, noting the smoke and dust that already come from the property, and the vibrations and concussive effects that emanate from it.

12. In rebuttal, the Applicant noted that the conveyor will not generate any additional noise.

13. The Applicant has taken measures to address—and mitigate—noise, smoke, and explosions arising from its operations.

14. The Applicant does not operate a night shift.

15. Hours of operation are generally Monday through Friday, from 7:30 A.M.–4:00 P.M.

### **Rationale**

This Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 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 variance 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. § 25.56(A).

This property is unique because of its size and shape and its proximity to the Maryland Correctional Institute. The correctional compound is of significant size, and its presence in this area is of singular impact. Moreover, because MCI is considered an institution for human care by the zoning authorities, the side yard setbacks on the subject property are increased to 100', rather than the usual 25'. Furthermore, the longtime recycling and reclamation use of the subject property is not commonly found elsewhere

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in the County. Given the combination of these factors, we consider the property unique and suitable for variance relief. (“‘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).)

The Applicant has demonstrated a practical difficulty if variance relief is not granted. The proposed use of the property is permitted and has long occurred thereon. The use of the conveyor in the site’s operation is unobjectionable, and likely will decrease noise, dust, and fumes that would accompany the transfer of materials by truck or bulldozer if this conveyor was disallowed. Strict compliance would increase adverse effects emanating from the operation or prevent a permitted use to occur on a portion of the property. Likewise, strict compliance would achieve little practical benefit, as the most-affected portion of the neighboring property is used as a solar farm. For all these reasons, we conclude that the grant of variance relief secures public safety and welfare and upholds the spirit of the Ordinance.

While we are cognizant and supportive of the concerns raised by opponents to this request, we note that the concerns seem to arise from the use of this property generally rather than from the variance relief requested or the installation of the conveyor.

Accordingly, this request for a variance is hereby GRANTED by a vote of 4–0.

BOARD OF APPEALS  
By: Neal R. Glessner, Chair

Date Issued: March 23, 2018

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

**Selena M. Wilkes  
Applicant**

**Appeal No. AP2018-006**

**OPINION**

This appeal is a request for a special exception to establish a banquet/reception facility, and for variances from the minimum 100' right side yard setback to 88', from the requirement to provide a durable, dustless surface for parking, and from the required 233 parking spaces to 110 spaces for said banquet/reception facility. The subject property is located at 16311 Kendle Road, Williamsport, Maryland; is owned by the Applicant; and is zoned Residential Suburban. The Board held a public hearing on the matter on February 21, 2018.

**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. The Applicant seeks a special exception, with associated variance relief, to establish a banquet/reception facility on the subject property.
2. The property is an irregularly shaped parcel that is 6.35 acres in area.
3. The property was long used as a farm.
4. A portion of the farm was sold and has been and is being developed into the Elmwood Farm community.
5. The subject parcel was the original farmstead and is improved with a farmhouse dwelling and a barn.
6. The farmhouse is the Applicant's residence and is being used as the Elmwood Farm bed and breakfast facility.
7. The barn, and its patio (the former barnyard area), is proposed to be the

banquet/reception facility site.

8. The bank barn is 3,140 ft.<sup>2</sup> in area.

9. Receptions, banquets, and other events are proposed to be held in the barn.

10. Event capacity is 220 attendees.

11. Offsite caterers will provide food; no food for events will be prepared onsite.

12. The Applicant or her sister is present at each event and provides oversight.

13. Events typically occur on weekends, with there being approximately one event per weekend for four to five months of the year.

14. Many of these events are weddings, and wedding season is in the Spring and Fall.

15. Events must end, contractually, by 10:30 P.M.

16. Bands are always located in the back of the barn to minimize sound dispersion to surrounding properties.

17. Speakers serving the patio area are always directed towards the barn to minimize sound dispersion to surrounding properties.

18. Live Sound Co, LLC, and Jeremiah Leiter, a sound and audio professional, performed an acoustic analysis of the property. The test simulated a "typical outdoor event with amplified music" and took measurements of ambient noise at seven different locations in the neighborhood.

19. The study concluded that "amplified music generated at a constant level of 91.4 dBa, from the determined outdoor source location [where the speakers are normally placed during an event], cannot be measured above the ambient noise level outside of Elmwood's property at Point 5 [Ripple Drive], 6 [John Martin Drive near the entrance], and 7 [John Martin Drive, at the end closest to Elmwood Farm]."

20. Live Sound Co determined that the spillover of noise, if any, from Elmwood was no greater at the identified measured locations than was the ambient noise at those locations.

21. Leiter recommended that "Elmwood Farm purchases an SPL meter to ensure that

the level at the farm does not exceed a peak of 103 dBa at a distance of 6ft from the source.” [sic]

22. Kendle Road has sufficient capacity, and is of adequate condition, to handle traffic frequenting the facility.

23. The use does not create excess dust or other environmental detriments.

24. Given the facility’s capacity, the need for parking does not exceed 110 spaces.

25. Handicapped parking spaces will be paved.

26. Approximately one-half of the proposed parking spaces are on gravel or on a concrete pad; the remainder will be on a grassy area.

27. Neighboring property owners—including the Applicant’s closest neighbor--cannot hear noise from events when they are inside their dwellings.

28. There is a demand for this type of facility in the area and it promotes economic development.

29. The banquet/reception use is an appropriate adaptive reuse of the agricultural property.

30. Most neighboring property owners do not identify traffic or noise as issues negative generated by this use.

31. This use is needed, promotes tourism and generates tax revenue, and is an asset to the community.

32. The Applicant is responsive to the concerns raised by residents in the neighborhood.

33. Greg Baisey, testifying in opposition to the appeal, noted that he was the first to buy in the Elmwood Farm development. He lives 400 yards from the subject property.

34. He expressed concerns about diminished property values, the incompatibility of the proposed use with surrounding residential properties, and the noise emanating from the facility.

35. He testified that the banquet/reception use was inappropriate to, and incompatible

with, the surrounding residential neighborhood.

36. Notwithstanding Mr. Baisey's assertions, the testimony and evidence clearly showed that the proposed use is compatible with the existing neighborhood given the lack of adverse effects affecting neighboring properties.

37. In particular, there was no probative evidence to show that the use generated inordinate adverse effects including noise, traffic, odors, lighting, or other adverse effects.

38. The Comprehensive Plan does not address banquet/reception facilities specifically, but it does encourage compatibility amongst uses and promotes business development within the Urban Growth Area, in which this parcel is located.

39. As we have found that the use is compatible with the existing neighborhood, we also find that the use conforms to the Plan.

## **Rationale**

### *The Special Exception*

The Board has authority to grant a special exception pursuant to Section 25.2(b) of the Zoning Ordinance for Washington County, Maryland. 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." Article 28A.

The proposed use is a permitted special exception use in this zone, and the testimony clearly established that the banquet/reception use is a favored adaptive reuse of the farmstead enjoying broad community support. We acknowledge that this commercial use is found amongst a residential neighborhood and that some object to its presence, citing concerns about noise and property values. No probative evidence was presented that the use negatively affected property values, and the weight of the evidence clearly showed that the use did not negatively affect surrounding homeowners' use of their properties.

The property is of adequate size to accommodate the use and buffer it from surrounding residences, tempering the adverse effects inherent to a banquet/reception facility, including noise, odors, or lighting. Moreover, the evidence established that, so long as speakers were properly directed and controlled, the noise generated by the use cannot be measured above the ambient noise level found in the neighborhood at the measured points. This is important, as it does much to reduce the discord amongst differing uses that might otherwise be expected from such a facility.

Furthermore, the evidence established that the use was not generative of traffic problems on Kendle Road or unusual amounts of spillover lighting. Most neighbors testified that the use did not disturb their quiet enjoyment of their homes or otherwise negatively impact their lifestyle. Instead, they spoke of the value that the use provided to the neighborhood and their support for its continued presence, and urged that we grant the special exception. The evidence showed that the use conforms to the Plan and is compatible with the existing neighborhood. It further showed that the establishment of this special exception use at this site will have 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). Therefore, the special exception is GRANTED WITH CONDITIONS as set forth below by a vote of 4–0.

#### *Conditions upon Special Exception Use*

1. Patrons shall not exceed 220 persons at any event.
2. Events must end no later than 10:30 P.M.
3. Speakers must face towards the barn and not exceed a measured peak volume of 103 dBa at a distance of six feet from the source.

#### *The Variances*

This Board has authority to grant variances upon a showing of practical difficulty or undue hardship. §§ 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 variance 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. § 25.56(A).

This property is unique due to its size and shape. Surrounding parcels are more regularly shaped and are generally of smaller size, and improved with dwellings. This parcel is irregularly shaped and is 6.35 acres in area. Its lot lines are not parallel or at right angles, but rather form an irregular polygon. Furthermore, the historic nature of the

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farmstead, which far predates adoption of zoning principles, is unusual in the neighborhood. Therefore, we consider the property eligible for variance relief.

The Applicant seeks variance relief from the mandated property line, from the requirement to provide a stable, dustless parking area, and from the proscribed number of parking spaces. The property line encroachment is caused by the interplay between the ride side property line and the historic location of the barn. Because the barn is not parallel with the right side yard property line, an encroachment is created. For these same reasons, a lesser variance is not feasible. There was no showing that the encroachment was offensive to any neighboring property owner, or that strict compliance would confer any additional benefit to a neighboring property owner.

The Ordinance requires a durable, dustless parking area for this use. The Applicant asks that the property be allowed to remain in its current condition, noting that handicapped spaces will be paved. Preservation of the property in its current condition maintains the rural character of the farmstead and is far more aesthetically pleasing than would be an impervious surface. A lesser relaxation is impracticable for this reason. The appropriateness of variance relief is further advanced by the fact that events are seasonal and generally occur only once per weekend. Thus, the natural surface will have time to recover from use, negating the risk that use will create a denuded area. Furthermore, the capacity limitation of the facility, and past usage, have shown that 110 spaces are adequate to serve the use. The number required by the Ordinance is derived from inclusion of the barnyard area, rather than the barn, which is the limiting factor of the site. For all the foregoing reasons, we conclude that the grant of the requested variance relief observes the spirit of the Ordinance and secures the public safety and welfare.

Accordingly, these requests for variances are hereby GRANTED by a vote of 4-0.

BOARD OF APPEALS

By: Neal R. Glessner, Chair

Date Issued: March 23, 2018

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

**Lee B. Worthington**  
**Applicant**

**Appeal No. AP2018-007**

**OPINION**

This appeal is a request for a variance from the minimum 100' left side yard setback to 30' for the construction of an agricultural structure. The subject property is located at 14617 Barkdoll Road, Hagerstown, Maryland; is owned by the Applicant; and is zoned Agricultural (Rural) and Rural Village. The Board held a public hearing on the matter on February 21, 2018.

**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. The Applicant seeks a variance from the minimum 100' left side yard setback to 30' for the construction of building at least 30'×50' in area.
2. The subject property is 41.14 acres in area.
3. The building will be used in the Applicant's farming operation for equipment and feed storage.
4. The building may also be used to house animals. If it is, then a 100' setback from property lines is required due to the animal husbandry use.
5. The site is preferred because the building will be visible from the Applicant's dwelling; the area is flat; and the area is not useful as productive cropland.
6. The proposed site is the most-appropriate site given the subject property's topography and will not require extensive fill efforts.
7. No opposition to this request was presented.

## Rationale

This Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 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 variance 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. § 25.56(A).

This request for variance relief is reasonable. The proposed use is a permitted use in this zone, and strict compliance with the setback requirement would frustrate this use. The need for variance relief is occasioned by the size, shape, and topography of the lot. A lesser relaxation is impracticable for the same reason. The proposed location is the most appropriate location given the location of the dwelling thereon, the grade of the property, and the ability to maximize the preservation of productive cropland. No opposition was presented to this request. Therefore, we conclude that the grant of this request observes the spirit of the Ordinance and secures the public safety and welfare.

Accordingly, this request for a variance is hereby GRANTED by a vote of 4–0.

BOARD OF APPEALS

By: Neal R. Glessner, Chair

Date Issued: March 23, 2018

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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 courts 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).