

BOARD OF APPEALS

December 11, 2019

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

AGENDA

DOCKET NO. AP2019-024: An appeal made by Andrey & Marina Grinevich for a special exception to establish a second dwelling unit on a parcel currently improved with a dwelling on property owned by the Appellant and located at 14219 Rockdale Road, Clear Spring, zoned Agricultural (Rural) - **GRANTED**

DOCKET NO. AP2019-025: An appeal made by Selena Wilkes for a special exception to establish an alcohol production facility on property owned by the Appellant and located at 16311 Kendle Road, Williamsport, zoned Residential Suburban - **GRANTED**

DOCKET NO. AP2019-026: An appeal made by Fireside Pizza and Catering, LLC for a Special exception to establish a banquet / reception facility; variance from minimum lot area of 5 acres to 1.14 acres; variance from 50ft. front yard setback along both street frontages to 0ft for existing building; and; variance from requirement to provide paved parking and access lanes on property owned by Mt Carmel Evangelical United Brethern Church and located at 5753 Mount Carmel Church Road, Boonsboro, zoned Preservation - **GRANTED**

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 Chrysta Hays at 240-313-2485 Voice, 240-313-2130 Voice/TDD no later than December 2, 2019. 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**

ANDREY AND MARINA GRINEVICH

Appeal No. AP2019-024

Applicant

OPINION

Andrey and Marina Grinevich (hereinafter "Applicants") apply for a special exception to establish a second dwelling unit at the subject property. The subject property is located at 14219 Rockdale Road, Clear Spring, Maryland; is owned by the Applicants; and is zoned Agricultural, Rural A(R). The Board held a public hearing on the matter on December 11, 2019.

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. Applicants are the owners of a 10 +/- acre parcel of land improved by a principal residence and located at 14219 Rockdale Road, Clear Spring, Maryland. The property is zoned Agricultural, Rural A(R).
2. Applicants' parents are elderly and currently reside in a two (2) story duplex home in Hagerstown, Maryland.
3. Mr. Grinevich's mother has had significant health issues, having been hospitalized three (3) times the last twelve (12) months.

4. Applicants propose to construct a two (2) bedroom, 1,200 square feet, Rancher-style home on their property, situated behind their home.

5. In 2003 the property was the subject of a subdivision plat to relocate the septic reserve area. There are two (2) approved septic areas on the property.

6. Mr. Grinevich is a builder and plans to construct the second residence himself.

7. The property has an existing well that has sufficient capacity to serve both residences.

8. In November 2019, Mr. Grinevich's mother had a medical issue, but his father had to call him so that Applicant could call 911 for an ambulance. Mr. Grinevich's parents do not speak English sufficient to communicate with 911 or first responders in the event of an emergency.

9. There was no opposition presented in this case.

Rationale

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. In the instant case, the Board is called upon to consider a special exception request to establish a second dwelling unit as substantially similar to other permitted uses at the subject property, in the zoning district.

The undisputed testimony from Mr. Grinevich and Fred Frederick, P.E., is that the construction of a second, small dwelling on the subject property is compatible with the

current uses in the neighborhood. This property is unique in that it has sufficient well and septic capacity currently to serve two (2) dwelling units. It also has enough acreage that it would qualify for subdivision as separate parcels in the future. While Applicants could do this now, it would result in a separate tax bill, utilities and other expenses that are more appropriately managed through the existing property, particularly considering Applicants' intention to care for elderly parents. Aside from the additional dwelling unit, there will be no visible, audible or other impact of this type of use on the surrounding properties.

In addition, the request follows a growing trend nationwide of elderly family members moving back to the family homestead rather than incur the immense cost of assisted living or nursing care. Applicants are making an important decision about late-life care, particularly considering Mr. Grinevich's mother's recent health issues. The special exception request is therefore consistent with the vision and purpose of the Zoning Ordinance to promote orderly development and use of land.

Accordingly, the request for a special exception to establish a second dwelling unit on a parcel currently improved with a dwelling is hereby GRANTED, by a vote of 5-0. The application is granted upon the condition that the proposed use be consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Michael Zampelli, Co-Chair

Date Issued: January 3, 2020

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

SELENA WILKES

Appeal No. AP2019-025

Applicant

OPINION

Selena Wilkes (hereinafter “Applicant”) apply for a special exception to establish an alcohol production facility at the subject property. The subject property is located at 16311 Kendle Road, Williamsport, Maryland; is owned by the Applicant; and is zoned Residential, Suburban (RS). The Board held a public hearing on the matter on December 11, 2019.

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. Applicant is the owner of the subject property located at 16311 Kendle Road, Williamsport, Maryland. The subject property is zoned Residential Suburban, RS.
2. The property was the subject of a prior special exception request in Case No. AP2018-006. The Board granted Applicant’s request for a special exception to establish a banquet and reception facility at the property, as well as requests for dimensional and parking surface variances. The Board also imposed conditions for hours of operation, capacity and usage, all of which were included in the final site plan approval for the property.

3. Since obtaining the prior special exception approval, Applicant has held thirty-nine (39) events, all of which have been conducted within the conditions imposed and without incident.

4. Applicant is seeking to establish a production operation for alcohol, which would include a craft distillery, small bottling facility and a tasting room.

5. Applicant has an existing two-level barn where the tasting room and retail floor space would exist for the use. The barn already has bathrooms for its use as event and banquet space.

6. Applicant has an existing milking barn that needs repair but would be converted into the manufacturing and bottling space for the use.

7. The property currently has parking capacity for 220 people.

8. Applicant expects approximately 25 to 50 customers for the tasting room space, but parking can accommodate both uses at the same time.

9. Applicant's proposes to be open on Wednesdays and Thursdays from 4:00 p.m. to 8:00 p.m., Fridays and Saturdays from 12:00 p.m. to 10:00 p.m. and Sundays from 12:00 p.m. to 6:00 p.m.

10. Applicant anticipates having a total of 10 to 20 employees.

11. There was no opposition presented at the hearing, although planning staff received correspondence both in support and expressing concerns for the project.

Rationale

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. In the instant case, the Board is called upon to consider a special exception request to establish an alcohol production facility at an already existing banquet and event facility.

The testimony before the Board indicated that the proposed use and the existing use are a natural fit to be commingled at the property. The property already has the ability to host events and serve guests, and more capacity than necessary. Implementing a tasting room and locally produced alcohol only enhances the draw for tourism, bookings and events. Aside from the customers visiting for tours or the tasting room during the week, there will be very little observable change to the property. The proposed use will further utilize the existing barn and give purpose to the decaying milking barn at the property. The production process and related retail uses will not produce any odors, gas, noise, light or other adverse effects that would impact the surrounding area. The proposed use is great for economic development and tourism enhancement in Washington County. The Board finds there are no adverse impacts of this use on the surrounding area and that it is consistent with, if not a continuation of the spirit and vision of the Zoning Ordinance.

Accordingly, the request for a special exception to establish an alcohol production facility at the subject property is hereby GRANTED, by a vote of 3-1. The application is granted upon the condition that the proposed use be consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Michael Zampelli, Co-Chair

Date Issued: January 3, 2020

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

**FIRESIDE PIZZA AND
CATERING, LLC
Applicant**

Appeal No. AP2019-026

OPINION

Fireside Pizza and Catering, LLC (hereinafter “Appellant”) applies for a special exception to establish a banquet/reception facility and variances to reduce the minimum lot area from 5 acres to 1.14 acres, to reduce both front yard setbacks from 50 feet to 0 feet and to waive the requirement to provide paved parking and access lanes, at the subject property. The subject property is located at 5753 Mount Carmel Church Road, Boonsboro, Maryland; is owned by Mt. Carmel Evangelical United Brethren Church; and is zoned Preservation, (P). The Board held a public hearing on the matter on December 11, 2019.

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 is the contract purchaser of a 1.14-acre tract of improved land located at 5753 Mt. Carmel Church Road, Boonsboro, Maryland. The property is zoned Preservation (P).

2. The subject property is currently owned by Mt. Carmel Evangelical United Brethren Church and is leased to Calvary Baptist Church, which conducts three (3) weekly services occurring on Wednesday and Sunday.

3. Appellant operates a food-truck business at various locations across Howard, Frederick and Washington Counties.

4. Appellant has a fleet of two (2) food trucks and anticipates adding a third truck in the near future. Appellant's food trucks are currently parked and stored at the owners' residence.

5. Appellant's only place for food storage is on the food trucks.

6. Appellant's business is shut down during the winter months.

7. The church has a kitchen and meeting space, sanctuary and other open space within the building.

8. Appellant proposes to upgrade the kitchen to a commercial grade kitchen to use as its base of operations for the food truck business. There will be storage for food and supplies inventory, a place for preparation and facilities for washing dishes. Appellant also proposes to park the food-truck fleet at the property.

9. Appellant has no plans to modify the sanctuary area and intends to continue leasing for church services. The property is already listed for lease on the market.

10. Appellant does not have any employees other than the owners.

11. There are currently 61 known grave sites and perhaps several more unmarked graves within a cemetery area at the subject property. The cemetery is accessed through the parking lot area.

12. There exists a total of ten (10) combined paved and gravel parking spaces at

the subject property. Additional and overflow parking is accommodated in the grass area next to the parking lot.

13. The subject property is listed with the Maryland Historical Trust on the Maryland Historical Sites Inventory.

14. Appellant anticipates utilizing the subject property primarily for food storage, to prepare food to go on the trucks, and to wash dishes and utensils related to its food-truck events. There may be some hosting of small, catered events as well as tastings, but these will not be the primary focus of the business at the subject property.

15. The State of Maryland has adopted new regulations, effective May 1, 2020, which require food-truck operators to have a “Base of Operations”.¹

Rationale

The Board is presented with both special exception and variance relief requests in this appeal. Because the variance relief will only be necessary if the use is approved as a special exception, we shall consider the special exception as a threshold request.

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. In the instant case, the Board is called upon

¹ See COMAR 10.15.03.25.

to consider a special exception request to establish a banquet/reception facility at the subject property in order to serve as Appellant's base of operation for a food truck business.

A Banquet/Reception Facility is defined as a "commercial establishment engaged in the provision of meeting or congregation facilities for special events such as weddings, parties, public meetings, and social gatherings. Such facilities may include on-site catering services. Restaurants are not included as part of this definition."² Although not the typical profile for such a use, Appellant's use will incorporate the meeting space for catered special events, tastings or social gatherings, and will continue to provide facilities for church services. Appellant's food-truck business and related base of operation will exist alongside and sometimes in collaboration with those uses.

In order to continue operating its food-truck business, Appellant will be required to have an established base of operations, where it has access to potable water, food storage and the ability to wash dishes and utensils.³ Appellant proposes to upgrade the existing kitchen facilities at the subject property to serve as its base of operations. This will not be a primary location for catering or tasting events, but some are expected as tangential to the proposed use. Appellant can use the property to prepare and stock the food trucks for its booked events across central and western Maryland. While there was significant concern expressed that this would become a restaurant, by definition this is not possible and would constitute a violation of the Ordinance. Appellant's presentation to the Board made clear that the property would primarily be used for before and after staging related to off-site food truck events.

² See Article 28A, Zoning Ordinance.

³ See COMAR 10.15.03.25.

Appellant's primary use of the property will be inside and not visible to the surrounding neighborhood or passersby, except for the food trucks parking in the lot. There may be the occasional delivery of inventory and the loading and unloading of the food trucks, but largely the activity will be contained inside or off-site. Thus, the use will not produce any gas, odor, noise, light or have any other adverse impact on the surrounding properties. Increased traffic is to be expected during tastings and special events however based on the testimony these will be infrequent and not the primary use of the property. To the extent that those activities would have an adverse impact, the Board is convinced it will not be any greater than another location within the zoning district.

Accordingly, the request for a special exception to establish a banquet/reception facility at the subject property is hereby GRANTED, by a vote of 4-1. The application is granted upon the condition that the proposed use be consistent with the testimony and evidence presented herein.

Variances

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56. ⁴ "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)

⁴ "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).

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).

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.)

The subject property is unique based on its small size, the layout of the improvements which are situated at an angle to the front corner of the property and its frontage on two (2) roadways, one being a significant State route through southern Washington County. If built today, the subject property and improvements would not comply with any of the bulk dimensional requirements set forth in the Ordinance. The church has existed since 1859, having been rebuilt in 1882, when there were no dimensional requirements imposed on the property.

It is these unique characteristics that the opposition points to in raising concerns about the proposed use. Multiple neighbors testified at the hearing that they were concerned about how the use would fit in a small church and property. There were multiple concerns raised about access to and maintenance of the cemetery. The Board appreciates these concerns and weighs them carefully when considering a property for which little use can be made without relaxation of the Ordinance requirements.

The minimum lot area required for a banquet/reception facility use is 5 acres pursuant to the Ordinance. However, the lot was created before lot dimensions were considered, let alone restricted by Ordinance. Given the nature of Appellant's business, it is unlikely that entirety of the property would ever get used; to require the four (4) additional acres imposed a hardship which prevents an otherwise productive use of the property. Appellant should be granted relief from the lot dimension requirement.

As previously stated, the church was constructed well before the adoption of the Ordinance and before there were setback requirements. Appellant is not proposing to change the footprint of the building, just that the Board confirm the existing conditions given that compliance is impossible. The Board is convinced that this is the very definition of practical difficulty, given that compliance would require moving or demolishing an existing historic structure. Appellant should be granted relief from the setback requirements.

As noted herein, Appellant will not be using the property as a typical banquet/reception facility and is unlikely to need significant amounts of parking on-site. Under strict compliance with the Ordinance, Appellant would have to create sixty-seven (67) parking spaces, covering approximately 12,000 square feet or one quarter (1/4) of an acre. This is unreasonable given the intended nature of the use and the fact that the property is zoned Preservation and is in a rural area. A parking area that large would require paving, which would be detrimental to the natural surfaces and surroundings. Appellant should not be required to provide the paved parking and access lanes required by the Ordinance.

Accordingly, the request for variances to reduce the minimum lot area from 5 acres to 1.14 acres, to reduce both front yard setbacks from 50 feet to 0 feet and to waive the requirement to provide paved parking and access lanes at the subject property are hereby GRANTED, by a vote of 4-0⁵.

BOARD OF APPEALS

By: Michael Zampelli, Co-Chair

Date Issued: January 8, 2020

⁵ The Board member who cast the dissenting vote for the special exception request, abstained from the vote on the variance requests.