

BOARD OF APPEALS

August 21, 2019

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

AGENDA

DOCKET NO. AP2019-017: An appeal made by R L R Investments LLC for a variance from required 25 ft. from street right of way to 4 ft. for freestanding sign support structure and variance from required 5 ft. from street right of way for any portion of sign to 2 ft. for placement of said sign for R&L Carriers on property owned by the Appellant and located at 12037 Greencastle Pike, Hagerstown, zoned Highway Interchange - **GRANTED**

DOCKET NO. AP2019-018: An appeal made by Shentel for a special exception to construct a 150 ft. monopole commercial communication tower on property owned by Hagerstown Washington County Industrial Foundation and located on the S/S of Yale Drive, approximately 1200 ft. W/ of Scholar Drive, zoned Office, Research and Industry - **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 Kathy Kroboth at 240-313-2469 Voice, 240-313-2130 Voice/TDD no later than August 12, 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**

R L R INVESTMENTS, LLC

Appeal No. AP2019-017

Appellant

OPINION

R L R Investments, LLC (hereinafter "Appellant") files this appeal based on a request for a variance to reduce the minimum required setback for a freestanding sign support from twenty-five (25) feet to four (4) feet and a variance to reduce the minimum required setback from a street right of way for a sign from five (5) feet to two (2) feet at the subject property. The subject property is located at 12037 Greencastle Pike, Hagerstown, Maryland; is owned by R L R Investments, LLC; and is zoned Highway Interchange (HI). The Board held a public hearing on the matter on August 21, 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 owner of the subject property which is located at 12037 Greencastle Pike, Hagerstown, Maryland and zoned Highway Interchange (HI).
2. Appellant purchased the subject property in order to develop a trucking terminal where trucks could load and offload freight.
3. The location of the subject property is along the southbound side of Route

63, located just north of the highway interchange with Interstate 81.

5. The east side of Route 63 contains a Maryland State Highway right-of-way for future development. Said right-of-way is 150 feet wide and was included in the development of Route 63 during the Eisenhower Administration's infrastructure improvement program. The right-of-way is only this wide on the east side of Greencastle Pike.

6. Appellant proposes to construct a cantilevered sign with the base to be located four (4) feet from the right-of-way line of Route 63, and the sign portion to be two (2) feet from the right-of-way line. The sign will identify the location of Appellant's truck terminal business and location.

7. The State Highway right-of-way area has considerable tree growth that makes it difficult to see anything back on the subject property when travelling on Route 63.

8. There was no opposition presented to this request.

Rationale

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56. ¹ "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)

¹ "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).) In this case, the subject property is one of only a few properties in the surrounding neighborhood that is affected by the 150-foot right-of-way, thus requiring improvements such as signs, much further from the roadway than at other locations. The right-of-way predates Appellant’s purchase of the subject property and the likelihood that Route 63 will be expanded to the outer limits of said right-of-way is extremely unlikely. The Board finds that the subject property is unique.

The Appellant has demonstrated a practical difficulty if variance relief is not granted. The unusually large distance separating the buildable area on the subject property and the road, has a detrimental effect on signage. The property is in the Highway Interchange zoning district which permits a wide variety of uses that customarily utilize signage to identify the business and/or location. Appellant is already limited by the tree cover on the right-of-way area, which limits visibility. To impose the strict mandates of the setbacks for a cantilevered sign imposes an extreme hardship on Appellant’s ability to enjoy the benefit of signage as its neighbors on the west side of

Route 63 already do. For all these reasons, we conclude that the grant of variance relief secures public safety and welfare and upholds the spirit of the Ordinance.

Accordingly, the request for a variance to reduce the minimum required setback for a freestanding sign support from twenty-five (25) feet to four (4) feet and a variance to reduce the minimum required setback from a street right of way for a sign from five (5) feet to two (2) feet at the subject property are hereby GRANTED by a vote of 5-0.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: September 3, 2019

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

SENTEL

Appeal No. AP2019-018

Applicant

OPINION

Shentel (hereinafter "Applicant") applies for a special exception to construct a 150-foot monopole commercial communication tower at the subject property. The subject property is a vacant parcel of land located at the south side of Yale Drive within 1,200 feet of Scholar Drive in Agerstown, Maryland; is owned by Agerstown Washington County Industrial Foundation; and is zoned Office, Research and Industry (ORI). The Board held a public hearing on the matter on August 21, 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 contract lessee of the subject property which consists of a vacant parcel of land on the south side of Yale Drive within 1,200 feet of Scholar Drive, in Agerstown, Maryland.
2. The subject property is currently owned by Agerstown Washington County Industrial Foundation and is zoned Office, Research and Industry (ORI).
3. Applicant proposes to construct a 150-foot self-supporting monopole

commercial communication tower at the subject property. The tower will be constructed of galvanized steel and will be gray in color, to aid in blending with the backdrop of the clouds and sky. The tower will include a fenced compound and will be served by underground utilities; however, it will not require lighting.

4. When operational, the tower can accommodate up to five (5) cellular communication carriers and will be constructed for co-location as required.

5. The tower will not interfere with television or radio transmissions, will not produce any noise, dust, gas or odor.

6. Cellular service in the area of the subject property is very spotty, particularly for Sprint customers. The closest existing tower is approximately one (1) mile away from the proposed site and does not close the gaps in weak signal and services issues. No other towers, buildings or elevated structures in the area afford Applicant the optimal ability to close the gap in this weak signal area.

7. The subject property is bordered by trees in all directions.

8. The proposed tower will be located approximately 360 feet from the nearest residential property and approximately 160 feet from Agerstown Community College.

9. There was no opposition presented to this request.

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 construct a commercial communication tower which also invokes Section 21B.2(b) of the Ordinance, requiring an applicant to demonstrate need and that the location proposed is the most logical to not impact the viewshed.

There is nothing about the subject property or the surrounding properties that would produce more adverse effects at this location as opposed to somewhere else in the zone. A commercial communication tower inherently has no gas, odor, dust or additional noise which could adversely impact the surrounding properties. The only real concern anyone might raise is being able to see the tower or if a property owner's view is blocked. Applicant provided numerous photographs from points all around the subject property illustrating the portion of the tower that can be seen. From multiple angles, the tower is difficult to identify because it blends into the backdrop of an overcast sky. The proposed tower's existence will largely be hidden by surrounding tree cover, further masking any affect it might have on viewshed from surrounding areas. Applicant's presentation also established that there is a real need for the proposed tower given the weak signal areas that exist in and around the college and hospital. Furthermore, Applicant successfully demonstrated that there were no existing towers upon which co-location would address the weak signal issue. The Board finds that the proposed use at the subject property 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). For all these reasons, we conclude that this appeal meets the criteria for a special exception and the criteria as set forth in Section 21B.2(b) of the Ordinance, as well as secures public safety and welfare and upholds the spirit of the Ordinance.

Accordingly, the request for a special exception to construct a 150-foot monopole commercial communication tower at the subject property 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: Paul Fulk, Chair

Date Issued: September 3, 2019