

**BOARD OF APPEALS**

**February 5, 2020**

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

**AGENDA**

**DOCKET NO. AP2020-001:** An appeal made by Tanvir & Ansa Pasha for a special exception to establish a doctor's office on property owned by the Appellant and located at 536 Antietam Drive, Hagerstown, Zoned Residential Suburban - **DENIED**

**DOCKET NO. AP2020-002:** An appeal made by Carolyn Hauver for a variance from required 12 ft right side yard setback to 7 ft for carport addition to existing garage on property owned by the Appellant and located at 17817 Bluebell Drive, Hagerstown, Zoned Residential Transition - **DENIED**

**DOCKET NO. AP2020-003:** An appeal made by JPK Properties LLC for a variance from required 50 ft right side yard setback to 15 ft for construction of proposed storage building on property owned by the Appellant and located at 18423 Breathedsville Road, Boonsboro, Zoned Agricultural Rural with Rural Business Overlay - **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 Heather Capezuto at 240-313-2462 Voice, 240-313-2130 Voice/TDD no later than January 27, 2020. 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**

**TANVIR A. PASHA**

**Appeal No. AP2020-001**

**Appellant**

**OPINION**

Tanvir Pasha (hereinafter “Appellants”) request a special exception to establish a doctor’s office at the subject property. The subject property is located at 536 Antietam Drive, Hagerstown, Maryland 21740; is owned by the Appellant; and is zoned Residential Suburban (RS). The Board held a public hearing on the matter on February 5, 2020.

**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 property located at 536 Antietam Drive, Hagerstown, Maryland. The property is zoned Residential Suburban (RS) and is within the County’s Urban Growth Area. It is located next to Wilson Orthodontics which received approval for a special exception in 2005.
2. The subject property consists of a
3. Applicant proposes to vacate the interior lot line between 536 Antietam Drive and 623 Antietam Drive to create one (1) large parcel for construction of medical offices.
4. Applicant proposes to access the site from Antietam Drive and Eastern

Blvd. Although no access has been approved, Applicant believes only a right in, right out will be approved along Eastern Blvd. The majority of the traffic to and from the site will utilize Antietam Drive.

5. Applicant is an internist and currently maintains a medical practice on Opal Court in Hagerstown, Maryland. It is anticipated that the practice would be relocated to the subject property once construction is finished.

6. Applicant's medical practice would operate during typical business hours during the week but may vary in the days that it is operating from week to week. Applicant anticipates that each physician may see 20 to 25 patients per day, with as many as 3 or 4 physicians working out of the practice at the proposed medical office.

7. The residences along Antietam Drive experience significant water issues including runoff from the subject property and the housing development across the street.

8. Antietam Drive is a residential street which often has kids playing on it and residents walking along the roadway with no sidewalks or paths. The school bus stops frequently to pick up kids in the morning and drop off kids in the afternoon. The peak timeframe is between 2:30 p.m. and 4:00 p.m.

### **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 doctor's office at the subject property.

Applicant proposes to construct a medical office on land in a flood plain and part

of a residential neighborhood. While Applicant hopes to prevail on its request for access from Eastern Boulevard, it is clear from the evidence that there is no guarantee it will be granted. Consequently, the proposed medical office will necessarily rely upon Antietam Drive and Klick Way for ingress and egress. The Board heard testimony from several residents of Antietam Drive regarding the quiet, residential nature of their street. They expressed grave concern over the proposed medical office because it would greatly increase the traffic and present safety concerns for the children and residents of Antietam Drive.

The residents also raised concerns regarding water runoff and flooding in the area. Applicant acknowledges that the subject property is in a flood plain and the Board heard testimony that the residents of Antietam Drive often have flooding and water issues when it rains. These issues are attributed to the current condition of the subject property and the flow of runoff from the nearby housing development along Eastern Boulevard.

As a use, medical offices do not generate a lot of noise, dust, gas, odor or light that would adversely impact the surrounding properties. The daily operation of the medical office will generally not have any impact on the residents of Antietam Drive. However, the increased traffic using Antietam Drive to access the subject property will directly affect the neighborhood. The redevelopment of the subject property may also create additional issues regarding water runoff and flood plain drainage that directly affects the residents of Antietam Drive. Because of the location and nature of the subject property, these impacts are greater at this location than they would be at another location within the zoning district. The Board is not persuaded that the proposed use 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).

Accordingly, by a unanimous vote of 5-0, the request for a special exception to

establish a doctor's office at the property known as 536 Antietam Drive, Hagerstown, Maryland is DENIED.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: March 5, 2020

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

**CAROLYN KAY HAUVER**

**Appeal No. AP2020-002**

**Appellant**

**OPINION**

Carolyn Kay Hauver (hereinafter "Appellant") requests a variance to reduce the side yard setback from twelve (12) feet to seven (7) feet for a carport addition at the subject property. The subject property is located at 17817 Bluebell Drive, Hagerstown, Maryland 21740; is owned by the Appellant; and is zoned Residential Transition (RT). The Board held a public hearing on the matter on February 5, 2020.

**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 improved, residential property located at 17817 Bluebell Drive, Hagerstown, Maryland. The property is zoned Residential Transition (RT).
2. The subject property consists of a residence and several outbuildings including a shed, pavilion and large garage, separate from the three-car garage attached to the house. There is a large paved area along the side of the larger garage which is not covered with a carport structure. Both the front and back yard are designated as septic reserve area.

3. The subject property is in a subdivision which has recorded covenants and restrictions pertaining to the use of land therein. The covenants and restrictions impose a limit of one (1) accessory or outbuilding per property.

4. Appellant purchased the subject property in 2017 and at the time, the shed, pavilion and large garage all existed on the property. Appellant has not changed the configuration, shape or size of the subject property.

5. There is a slope downward from Appellant's property to her neighbor's property which already produces some water runoff when it rains.

6. Approximately eighteen (20) months ago, Appellant and her next-door neighbor discussed the possibility of an addition to the larger garage on the subject property. This included a discussion of a possible carport over the existing pavement area where Appellant has her recreational vehicle parked.

7. After speaking with personnel at the County Permits office, Appellant was under the impression that she did not need a permit or variance to construct the carport structure.

8. Appellant's carport was constructed and installed by a contractor in early October 2019. At the time, Appellant's neighbor was out of town, but was informed by another neighbor and called the Permits office.

9. Upon competition, Appellant was advised that she needed a zoning permit for a variance in order to maintain the carport structure. Appellant came before this Board in Case No. AP2019-021, requesting a variance to five (5) feet on the right side yard to accommodate the carport. The variance request was denied in an Opinion dated December 3, 2019.

10. Appellant is currently parking a covered utility trailer in the carport area. The recreational vehicle is stored in the large garage building.

#### **Rationale**

The 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).

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 the instant case, the Board is called upon to consider a variance request for a structure that has already been constructed. Appellant has modified her variance relief request in the hopes of having it reconsidered by the Board. Because the instant appeal was filed within three (3) months of the previous denial, the Board must first determine as a threshold matter, whether the Board can consider the appeal under the Ordinance.

### ***Eligibility for Consideration***

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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).



The Zoning Ordinance sets forth a limitation upon making the same or similar requests for variance relief and special exceptions. Section 25.7 of the Ordinance provides:

If the application is disapproved, thereafter the Board shall take no further action on another application for substantially the same proposal, on the same premises, until after twelve (12) months from the date of such disapproval.

Appellant's previous variance request involved the same carport, same side yard setback but requested a reduction from 12 feet to 5 feet. That request was denied in a written opinion dated December 3, 2020, following a hearing on November 13, 2019. In comparing the instant appeal with the prior appeal in November 2019, there appear to be two (2) differences that stand out. First, the variance request is to reduce the side yard setback from 12 feet to 7 feet to accommodate the previously constructed carport. In addition, Appellant testified that she was now parking the recreational vehicle in the large garage and intended to use the carport structure to house a covered utility trailer.

A difference of two (2) feet and slight alteration of intended use is not sufficient to categorize the instant appeal as a new request. The Board finds that this new variance request is substantially similar if not identical to the previously denied request. Pursuant to 25.7 of the Ordinance, the Board cannot take further action on the variance relief and must deny Appellant's appeal.

Accordingly, by a majority vote of 4-1, the variance request to reduce the side yard setback from twelve (12) feet to five (7) feet for a carport addition at the property known as 17817 Bluebell Drive, Hagerstown, Maryland is DENIED.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: March 5, 2020

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

**JPK PROPERTIES, LLC**

**Appeal No. AP2020-003**

**Appellant**

**OPINION**

JPK Properties, LLC (hereinafter “Appellant”) requests a variance to reduce the side yard setback from fifty (50) feet to fifteen (15) feet for construction of a proposed storage building at the subject property. The subject property is located at 18423 Breathedsville Road, Boonsboro, Maryland 21713; is owned by the Appellant; and is zoned Agricultural, Rural, A(R). The Board held a public hearing on the matter on February 5, 2020.

**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 agricultural property located at 18423 Breathedsville Road, Boonsboro, Maryland. The property is zoned Agricultural, Rural, A(R).
2. The subject property consists of active farm fields and an existing barn building. Applicant farms the fields in conjunction with the neighboring farmlands. The barn is used to store farm equipment and some equipment related to Keplinger’s Excavating business. Both Appellant and Kerlinger’s are owned by the same person.

3. In December 2019, a Map Amendment was granted in Ordinance No. 2019-033, providing a Rural Business Overlay for the subject property.

4. Appellant proposes to relocate storage of construction equipment for Keplinger's Excavating to the subject property. The plan is for the construction equipment to be stored in the existing barn, and to construct an additional barn building for overflow and the storage of farm equipment.

5. The proposed location for the new barn building is situated near the property line to avoid interfering with the existing farm fields and for logical traffic flow through the property.

6. Appellant's immediate neighbor was consulted and does not object to the proposed construction or the request to reduce the side setback requirements.

7. There was no opposition presented to this appeal.

### **Rationale**

The 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).

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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).

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).)

Appellant sought the Rural Business Overlay so that he could utilize the subject property for storage for Keplinger’s Excavating business. Appellant currently farms portions of the subject property in conjunction with the neighboring farm as if the properties are one contiguous farm field. In order for Appellant to comply with the setback requirements, the proposed barn building would have to be constructed in a location that eliminates the current farm field, thereby affecting yield. This presents both practical difficulty and a hardship as Appellant should not have to disrupt the already existing farming operation when moving the footprint of the building could resolve the issue. The requested variance is intended to locate the building with minimal impact on the existing farm field and also to create a logical traffic flow for large equipment coming into the property. The variance is necessary for Appellant to make reasonable use of the property and is consistent with the intent and spirit of the Ordinance.

Accordingly, by a unanimous vote of 5-0, the variance request to reduce the side yard setback from fifty (50) feet to fifteen (15) feet for construction of a storage building at the property known as 18423 Breathedsville Road, Boonsboro, Maryland is GRANTED.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: March 5, 2020