

BOARD OF APPEALS

February 16, 2022

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

AGENDA

DOCKET NO. AP2022-001: An appeal was made by NWJ Enterprises LLC for a special exception for a recreation center on property owned by the appellant and located at Valley Road, South of 612 Valley Road, Knoxville, Zoned Environmental Conservation/Rural Village. - 6:00 p.m. **-GRANTED**

DOCKET NO. AP2022-002: An appeal was made by Jeffrey Hood for a special exception for a bed and breakfast to be established in future dwelling on property owned by the appellant and located at the corner of Chestnut Avenue, Maryland Avenue, and Roosevelt Avenue, Cascade, Zoned Rural Village. – 6:20 p.m. **-GRANTED**

DOCKET NO. AP2022-003: An appeal was made by Michael & Beth Johnson for a variance from the required 20 ft. front yard setback for east property line to 8 ft. for construction of attached two car garage to existing single family dwelling on property owned by the appellant and located at 18913 Waldron Place, Hagerstown, Zoned Residential Urban. – 6:40 p.m.- **POSTPONE TILL THE MARCH 16 HEARING**

DOCKET NO. AP2022-004: An appeal was made by Kevin Chamberlin for a change in non-conforming use from storage for construction and outdoor RV to indoor storage for commercial business equipment, tools, and auction items in existing commercial building and lot owned by Stephen & Janeen Leizear and located at 18015 Horst Lane, Hagerstown, Zoned Residential Transition.-**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 Katie Rathvon at 240-313-2464 Voice, 240-313-2130 Voice/TDD no later than February 7, 2022. Any person desiring a stenographic transcript shall be responsible for supplying a competent stenographer.

Due to government regulations during the COVID-19 restriction, all hearing will take place virtually. No participants will be allowed to attend the hearing in person until further notice. The general public who wish to give testimony towards a case is **strongly encouraged to do so by writing a letter or by sending an email to the following:**

Katie Rathvon, Zoning Coordinator
80 W Baltimore St
Hagerstown, MD 21740
krathvon@washco-md.net

All letters and emails will be read during the hearing and placed on file as an official record of the case. If you would rather give a voice testimony and/or listen to the hearing, you can do so by teleconferencing. Using a phone, you can dial in at the scheduled time of the hearing to (301) 715-8592. When prompted use meeting ID code **936-5340-6468** and meeting password **185254**. You also have the option to participate via live video or watch the hearing live. Using a computer or smart phone, go online to www.zoom.us and use the same meeting ID number and meeting password to access the hearing. Again, you are strongly encouraged to submit your testimony by letter or email.

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

NWJ ENTERPRISES, LLC

APPEAL No. AP2022-001

APPELLANT

OPINION

NWJ Enterprises, LLC (hereinafter, "Appellant"), a Maryland limited liability company, requests a special exception to allow the establishment and operation of a recreation center upon the subject property. The subject property, owned by Appellant, is located at on Valley Road, Knoxville, Maryland, and is split-zoned Rural Village and Environmental Conservation. The Board held a public hearing on the matter on February 16, 2022.¹

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 is the owner of the subject property (acquired in August 2021) located on Valley Road, Knoxville, Maryland (MD real property tax account ID number 11-008739). The subject property is split-zoned Rural Village (RV) and Environmental Conservation (EC).

2. The subject property is irregularly shaped, comprised of approximately

¹ Due to the ongoing Covid-19 pandemic, in-person access and contact for public hearings has been limited, especially in County buildings. In January 2022, the County re-transitioned to conducting quasi-judicial hearings exclusively by remote virtual hearing. All participants and witnesses, including the Board members and County staff appeared via Zoom® videoconferencing, and the public at large were permitted to participate by telephone/video. All notices for the hearing provided the information necessary to call in and/or participate remotely, and those who wished to participate were encouraged to make written submissions as well.

3.084 acres, and currently is unimproved (according to MD State Department of Assessment and Taxation records), although Appellant's representative mentioned an existing "rental residence" on the subject property.

3. Appellant desires to establish and operate a recreation center on approximately 1.18 acres of the subject property.

4. A special exception is required to operate a recreation center (hereinafter, the "Center") in both the RV and EC zoning districts (Ordinance, Table §3.3(1)(E)).

5. Appellant intends to use the subject property for conducting "Airsoft" outdoor team shooter activities (the guns, teams, and gameplay being similar in many respects to "paintball"), and perhaps also as an archery range.

6. The subject property is located less than 200 feet² from another recreational business (River & Trail Outfitters on Valley Road) owned by Appellant, which conducts tubing (mostly), and some rafting and canoeing activities, which with Appellant hopes to cross-market to attract customers (mostly local).

7. The distance of the gameplay field at the proposed Center from neighboring properties, the use of special pellet-catching netting that will mark the boundaries of the gameplay field, and natural forested land surrounding said field will provide buffering to enhance public safety, as will special airsoft safety training provided to all players prior to each game session. In addition, all players and referees wear safety gear while on the gameplay field. Property to the West of the subject property is undeveloped and to the East is excess State land.

8. Activities on the subject property will be limited to daylight hours and when the trees thereon are leafed.

9. With the exception of toilet facilities (subject to government review and requirements), no new structures are proposed. In addition, no lighting or landscaping is proposed, although grading and planting or removal of trees or other vegetation may occur. Parking will be away from Valley Road.

10. The ammunition used by the airsoft guns is plant-based and biodegradable, and the guns are battery-operated pressurized air powered to minimize the noise of the guns (roughly the sound of closing a door) and the distance

² Gameplay will occur several hundred feet further away on the southernmost portion of the subject property.

the ammunition can travel. Ballistic chronograph technology is used to verify the muzzle velocity of all guns used to ensure the safe travel distance of fired ammunition.

11. Gameplay sessions are scheduled in advance with each session lasting from 10-30 minutes. Between 4-10 people are on the gameplay field at any one time, and many groups sign up for multiple contiguous blocks of gameplay time.

12. Traffic to and from the Center is expected mainly to use MD Route 340. Traffic conditions on Valley Road is heavy at rush hour can be difficult to negotiate.

13. Appellant intends to hire 3-5 seasonal employees who will work on site overseeing and refereeing the airsoft gameplay. All employees will be safety, first-aid, and CPR trained.

14. Appellant and its counsel submitted a supplement to the application summarizing the particulars of the proposed use and how the use satisfies the criteria applicable for considering a special exception use. Also submitted were: a) several photographs of the entrance road, check-in area for customers, and a graded dirt parking area; b) a wikipedia article on airsoft; and c) a color-coded parcel and zoning map of the subject property and surrounding properties.

15. An email in support of the application was received and read into the record from a resident on Garretts Mill Road in Knoxville, expressing that River & Trail Outfitters "have been great stewards" of their property, that in her 15 years of living in the area she has never had any issues with the company or their guests, and Appellant's support of environmental conservation, recreation activities for youth, veterans, and disabled persons, and fundraising activities.

16. An email in opposition to the application was received and read into the record from a resident on Valley Overlook Road in Knoxville, expressing her concerns regarding the Valley Road/Route 340/Keep Tryst Road intersection that "is very dangerous and [where] numerous vehicles have been in accidents." She described recent conditions of traffic and other issues with the intersection and stated that "there should be no exceptions given to any commercial business until the dangers of the intersection...are addressed." The resident also testified by telephone to the same effect.

17. Another email in opposition to the application was received and read into the record from a resident on Deer Path Road in Knoxville, expressing his

concerns with the River & Trail Outfitters business, particularly with regard to the dearth of parking along Valley Road and the lack of attention and care of the patrons of said business when existing their vehicles and unloading their gear in the roadway, and when backing out of their parking spaces onto Valley Road. He also described situations with buses, after having dropped off their passengers at the business having insufficient turnaround space, resulting in the buses having to "travel about a half mile up Valley Rd. to Deer Path in order to turn the bus around to get back on Route 340." He further stated his concerns that traffic will worsen if the special exception is improved and that the business' employees "have not done a good job policing their customers as to where to park, load their vehicles, or that they can't stand in the middle of a County road."

18. A caller in favor of the application stated that he had no problem with the business, but was concerned about runoff into the river and believes the County should work with the State to put in a traffic light to deal with the traffic at the aforementioned intersection.

19. A memo was received and read into the record from a Plan Reviewer with the County Division of Engineering noting the sensitive (environmental) areas nearby, that the existing access to the parcel from adjoining lands is impacted by floodplain, and that "[a]ny proposed structures should be located outside of the floodplain areas on the properties [sic]." He further noted that:

"All clearing, grading, construction and/or development must be done pursuant to an approved plan and in accordance with the [County's] Stormwater Management, Grading, Soil Erosion and Sediment Control Ordinance and Flood Plain Ordinance...."

20. No other communications or correspondence was received.

21. Appellant testified in rebuttal that instructions will be provided to all participants on traffic and proper parking, and that participants sign up for multiple time slots, so they stay for awhile. He also stated that sessions will begin at 9:00 a.m. and end by 5:30 p.m. from April to Thanksgiving (weekends only until Memorial Day and after Labor Day, seven days a week in between) and sessions will be by reservation only.

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).

In the instant case, Appellant’s counsel, Appellant’s managing member, and a technical representative of Appellant, provided testimony and physical evidence regarding the subject property and the proposed use thereon, and the Board made findings of fact regarding the same as set forth hereinabove. The Board notes that no lighting will be used, and that it appears dust, noise, and traffic will not be any greater than similar recreational uses in the area. The Board also noted that it appears proper safety precautions will be implemented for the activities at the Center. The Board took note of the traffic issues, but also indicated that the traffic issues have existed on Valley Road and at the intersection with MD Route 340 well before this proposed use. In general, the Board believes that the overall expected lights, noise, dust, odors, and other sensory elements for this use which might have deleterious impacts on surrounding properties are not beyond that for similar uses in these zoning districts.

The Board finds that the proposed use at the subject property will not generate 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 operate recreational center on the subject property is GRANTED, by a vote of 3-2. Said variance is granted upon the condition that establishment and operation of the recreational center thereat will be conducted in a manner consistent with the testimony and evidence presented herein and in compliance with all other applicable governmental requirements.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: March 18, 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**

JEFFREY HOOD

APPELLANT

APPEAL No. AP2022-002

OPINION

Jeffrey Hood (hereinafter, "Appellant") requests a special exception to allow the operation of a bed and breakfast establishment in an owner-occupied single-family dwelling to be constructed upon the subject property. The subject property, owned by Jeffrey Hood, is located at the corner of Chestnut Avenue and Maryland Ave, Cascade, Maryland, and is zoned Rural Village. The Board held a public hearing on the matter on February 16, 2022.¹

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 is the owner of the subject property (acquired in August 2021) located at the corner of Chestnut Avenue and Maryland Avenue, Cascade, Maryland (MD real property tax account ID number 14-001042). The subject property is zoned Rural Village (RV).

2. The subject property is rectangular-shaped, comprised of approximately

¹ Due to the ongoing Covid-19 pandemic, in-person access and contact for public hearings has been limited, especially in County buildings. In January 2022, the County re-transitioned to conducting quasi-judicial hearings exclusively by remote virtual hearing. All participants and witnesses, including the Board members and County staff appeared via Zoom® videoconferencing, and the public at large were permitted to participate by telephone/video. All notices for the hearing provided the information necessary to call in and/or participate remotely, and those who wished to participate were encouraged to make written submissions as well.

32,400 square feet, and currently is unimproved.²

3. Appellant desires to construct an approximately 2,000 square foot single-family dwelling with four (4) bedrooms and two (2) bathrooms on the subject property and to operate said dwelling as a "bed and breakfast" establishment (hereinafter, "B&B"). Appellant intends to occupy the dwelling as his personal residence and will be the only employee of the B&B.

4. A special exception is required to operate an owner-occupied B&B in the RV zoning district (Ordinance, Table §3.3(1)(B)).

5. Appellant intends to clear some trees in the southeastern half of the subject property for construction of the dwelling, leaving a natural tree buffer around all four sides of the property.

6. Appellant intends to offer overnight stays for guests throughout the week in a least three (3), but no more than four (4) of the bedrooms initially. Appellant does not intend to provide cooked meals to guests or to the public in general, but will have supplies (prepackaged goods) available for guests to purchase.

7. Many of Appellant's guests will be persons hiking along the Appalachian National Scenic Trail (which runs approximately 800 feet due West of the subject property), looking for a place to rest before continuing their journeys. Numerous supportive comments (and over 130 "likes") were received in response to Appellant's posting on the Appalachian Trail Hikers Facebook® Page.

8. A 20' x 40' off-site parking pad for four (4) vehicles will be located on the subject property for guests, with a ground-lighted walkway to and from the B&B. As most of Appellant's guests will be arriving by foot, it is not expected that the B&B will result in any additional offsite parking.

9. No additional lighting will be installed other than that used for a typical single-family dwelling. It is not expected that the B&B will generate any odors, dust, smoke, fumes, vibrations, glare, or noise greater than that of a typical single-family dwelling.

10. The B&B will be open seven (7) days a week, with evening quiet hours to be enforced starting at 8:30 p.m., and 9:00 p.m. or 9:30 pm. on weekends.

² For many decades in the early 20th Century, the 3½-story "Crouts Hotel" stood on the subject property and served guests in the "Pen Mar" region.

11. Appellant submitted (and the Board considered) two screenshots from AirBnB® and VRBO® websites which did not show any temporary lodgings available through those companies within 2+ mile area of the subject property, indicating the area may be underserved in this regard.

12. Appellant also submitted (and the Board considered): a) an aerial photo showing the location of the subject property within the greater Cascade area; b) an aerial photo of the subject property bounded within public streets on three sides, showing the area to be cleared, setbacks, and location of the proposed dwelling, parking pad, and ground-lit walkways; c) a printout of a portion of the aforementioned Appalachian Trail Hikers Facebook® Page; and d) a summary addressing each of the criteria for the requested special exception and containing a picture-postcard image of the bygone Crouts Hotel.

13. Appellant did not receive any negative comments from neighbors. No other persons testified in favor of or in opposition to the application.

14. A memorandum was received and read into the record from a plan reviewer in the County Division of Engineering noting the requirements for an entrance permit for any new driveway access (onto Roosevelt Avenue bordering the rear/Northwest of the subject property); and also noting that any clearing, grading, construction, and/or development must be approved and conducted in accordance with applicable County ordinances for such activities.

15. A memorandum was received and read into the record from the staff of the County Historic District Commission expressing the Commission's position that:

"The proposed use of a Bed and Breakfast would not affect the historic nature of the [Pen Mar] village as it is in line with those historic uses. The proposed minimal site disturbance and setbacks for the use are like those throughout the village and will both blend the use with its existing surroundings and retain the character of Pen Mar's streetscapes....therefore, the HDC has no objections to this zoning appeal."

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).

In the instant case, Appellant provided testimony and photographic evidence of the subject property, and the Board made findings of fact regarding the same as set forth hereinabove. The Board notes that Appellant's testimony and submitted evidence regarding his proposed use of the subject property appears to "cover all the bases" for a special exception, including Appellant's intention to occupy the premises as his principal residence, and the overall expected lack of noise, odors, or other sensory elements beyond that of a typical single-family dwelling used as a B&B that might have a deleterious impact on surrounding properties.

The Board also notes with favor the positive comments received from the County Historic District Commission regarding the suitability for the proposed B&B establishment in the Pen Mar village.

The Board finds that the proposed use at the subject property will not generate 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 operate a bed and breakfast establishment in a single-family dwelling to be constructed on the subject property is GRANTED, by a vote of 5-0. Said variance is granted upon the condition that construction of the single-family dwelling and operation of the bed and breakfast therein will be conducted in a manner consistent with the testimony and evidence presented herein and in compliance with all other applicable governmental requirements.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: March 17, 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.

The Board of Zoning Appeals reserves the right to vary the order in which the cases are called. 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.

Paul Fulk, Chairman
Board of Zoning Appeals

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

KEVIN CHAMBERLIN

APPELLANT

APPEAL No. AP2022-004

OPINION

Kevin Chamberlin (hereinafter, "Appellant") requests approval to change a nonconforming use from construction storage and outdoor recreational vehicle storage to storage for commercial business equipment, tools, and auction items at the subject property. The subject property, owned by Stephen Leizear and Janeen Leizear, is located at 18015 Horst Lane, Hagerstown, and is zoned Residential, Transition. The Board held a public hearing on the matter on February 16, 2022.¹

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 is a potential contract purchaser of the subject property owned by Stephen Leizear and Janeen Leizear (which they acquired in June 2013) located at 18015 Horst Lane, Hagerstown, Maryland. The subject property is zoned Residential, Transition.

2. The subject property is rectangular-shaped, comprised of approximately

¹ Due to the ongoing Covid-19 pandemic, in-person access and contact for public hearings has been limited, especially in County buildings. In January 2022, the County re-transitioned to conducting quasi-judicial hearings exclusively by remote virtual hearing. All participants and witnesses, including the Board members and County staff appeared via Zoom® videoconferencing, and the public at large were permitted to participate by telephone/video. All notices for the hearing provided the information necessary to call in and/or participate remotely, and those who wished to participate were encouraged to make written submissions as well.

0.62 acres, and currently is improved by an approximately 7,440 square foot pole-type building covered with metal siding and roof, and having a crushed gravel entrance and parking areas around said building.

3. In August 1974, the Board of Appeals (AP-187) granted an expansion of a nonconforming use on the subject property (then zoned Residential Rural) to a prior owner for construction of a 60' x 130' pole building to store crops for local farmers, and increasing the overall nonconforming use area by 35% to a total of 140' by 200' for storage of grain and equipment.

4. In December 1994, the Board of Appeals (AP94-140) granted a change of a nonconforming use on the subject property (then zoned Residential Rural) to a prior owner for continued use for storage of grain and equipment and adding storage of recreational vehicles such as boats, campers, and motor homes, under the conditions that no piece of equipment would exceed a height of eight (8) feet, that all storage would be within the buildings² or enclosed courtyard and not outside, that no maintenance or repair of the vehicles would occur on the premises, and there would be no use of the entrance on the West of the property facing the residential subdivision.

5. In October 1996, the Board of Appeals (AP96-128) granted a change of nonconforming use on the subject property (then zoned Residential Rural)³ to a prior owner for storage of construction equipment and tools in the pole building located on the East of the property, under the condition that storage of items outside would be limited to the yard on the West side of the Eastern building (*i.e.*, between the buildings).

6. Appellant intends to lease the subject property to an entity controlled by Appellant, BidWithUs, LLC (hereinafter, "BWU"), for the indoor storage of commercial business equipment, tools, and auction items. BWU is a commercial asset liquidation company, engaged in the business of selling client assets through its online auction website. All sales by BWU are conducted online and no on-site auctions or sales will take place on the subject property.

² Prior to February 1997, the subject property was part of a larger parcel upon which a slightly larger pole type building (similar to the one on the subject property) already existed on the West side of the parcel. On February 7, 1997, said larger parcel was subdivided roughly in half from North to South, resulting in two parcels with a pole type building situated on each half. The instant appeal involves the parcel (the subject property) to the East; however, all conditions set forth in the prior appeals still apply to the subject property, except as may be modified by this Opinion.

³ The subject property in this case was rezoned to Residential, Transition in the July 2012 comprehensive rezoning.

7. The current nonconforming use of the subject property is ongoing. The above-described activities will constitute a change in the current nonconforming use of the subject property, and such change (alteration) of the nonconforming use requires approval by the Board (Ordinance, §4.3(b)).

8. For the majority (80-85%) of BWU's sales, the winning bidders take possession of the purchased assets at the location(s) where said assets were placed and used by their former owners. For the remaining sales, BWU will hold the purchased assets inside the building at the subject property for pickup by the winning bidders.

9. BWU will facilitate and oversee the asset pickups on the subject property, said pickups to be scheduled one at a time and in no less than 15-minute intervals, to allow for controlled and efficient loading of the assets. Said pickups are expected to occur approximately every 6-8 weeks during the year.

10. BWU will have one (1) employee, and from time to time will store two (2) trailers and a Ford F-450 pickup truck at the subject property.

11. Appellant provided the Board with an affidavit from property owner Janeen Leizear affirming the current nonconforming use of the subject property and the property owners' desire to sell the subject property to Appellant, and expressing their belief that the proposed use will be less intensive than the current use.

12. Appellant also provided the Board with a written statement from Appellant's counsel, together with an aerial picture and a subdivision plat, both showing the subject property and location of the building thereon.

13. Appellant and Appellant's counsel both testified in support of the application. No other persons testified in support.

14. Roy Eisentrout, a neighbor at 18006 Horst Lane (across the street and two parcels to the Northwest of the subject property), testified as to his concerns regarding whether the changed use would involve indoor or outdoor storage, traffic in and out of Horst Lane, that he is in favor of the application if there are no on-site auctions, and that the proposed use otherwise would be an improvement. Appellant and Appellant's counsel testified that there would be less traffic to the site than with the current use, that pickups will be limited to one at a time in the interval stated, and that storage of all auction items would be indoors. No other persons testified in opposition, and no correspondence or other communications were received from any government authorities.

RATIONALE

A nonconforming use is "a use of a building or land lawfully existing at the time this Ordinance becomes effective and which does not conform with the use regulations of the district in which it is located." (Ordinance, Article 28A (definitions))

The Board has authority to approve requests for alteration or expansion of nonconforming uses, so long as there is not a cessation of the nonconforming use for six (6) months or more preceding the particular request. As in all cases before the Board, care and attention should be given to the orderly and appropriate use of land to ensure that such use is consistent with the spirit and intent of the Ordinance.

In the instant case, Appellant provided testimony and other tangible evidence regarding the subject property and its current use, and the Board made findings of fact regarding the same as set forth hereinabove. The Board accepted the statements in the affidavit from one of the property owners; in particular, that the existing nonconforming use has continued to the date of the application. The Board noted its desire to protect neighbors, such as Mr. Eisentrout, from on-site auctions at the subject property, and expressed satisfaction with Appellant's and Appellant's counsel's testimony that on-site auctions will not be conducted, and that Appellant would obtain approval from the Board prior to any conducting on-site auctions.

The Board further noted that the proposed change in the nonconforming use generally will be less intensive than the current nonconforming use and will result in an improved appearance of the subject property, both of which will be better for the neighborhood.

Therefore, for all these reasons, the Board concludes that this appeal satisfies the requirements for approval of a change in the nonconforming use of the subject property, 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 change in the nonconforming use from construction storage and outdoor recreational vehicle storage to storage for commercial business equipment, tools, and auction items on the subject property is GRANTED, by a vote of 5-0. Said variance is granted upon the condition that the changed nonconforming use as approved will be conducted in a manner consistent

with the testimony and evidence presented herein and in compliance with all other applicable governmental requirements.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: March 18, 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.