

BOARD OF APPEALS

March 2, 2022

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

AGENDA

DOCKET NO. AP2022-005: An appeal was made by Katherine & Brooks Long for a special exception for a banquet/reception facility and variance to reduce the durable dustless surface parking are to zero except for the required paved handicap space for the banquet/reception facility, use will be in association with Deliteful Dairy on property owned by the appellants and located at 16230 Long Delite Lane, Williamsport, Zoned Agricultural Rural. - 6:00 p.m.-**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 21, 2021. 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**

KATHERINE LONG & BROOKS LONG

APPEAL NO. AP2022-005

APPELLANTS

* * * * *

OPINION

Katherine Long and Brooks Long (hereinafter collectively, "Appellants") request a special exception to allow the establishment of a banquet/reception facility at the subject property. Appellants also request a variance to reduce the durable dustless surface parking area required for the proposed use to zero square feet, except for handicapped parking spaces.¹ The subject property, owned by Appellants, is located at 16328 Long Delite Road, Williamsport, Maryland, and is zoned Agricultural (Rural). The Board held a public hearing on the matter on March 2, 2022.

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. Appellants are the owners of the subject property located at 16328 Long Delite Road, Williamsport, Maryland. The subject property is zoned Agricultural (Rural) (A(R)).
2. The subject property is an irregularly shaped parcel comprised of approximately 157.91 acres, improved by a single-family dwelling and other buildings typically used in dairy farming operations.

¹ In November 2018, a variance was granted from the requirement to provide a durable dustless surface for parking associated with a milk-processing plant and retail facility for sales of dairy products produced by Appellants' business, Deliteful Dairy, LLC. Permission was given to lay gravel for the parking lot area, of the same type stone as for the existing farm lane, and to install pavers for the handicapped parking spaces.

3. Appellants propose to construct an open-air pavilion no larger than 40' x 50' for use as a banquet/reception facility (hereinafter, the "Facility"), adjacent to one or two 30' metal grain storage bins to be installed (that may later be converted for event use), and desire to reduce the dustless durable parking area requirement to zero square feet; however, Appellants will comply with the requirement for paved handicapped parking spaces.

4. A special exception is required to operate a banquet/reception facility in the A(R) zoning district (Ordinance §3.3(1)(B)).

5. A variance is required to reduce the dustless durable area parking area requirement in the A(R) zoning district (Ordinance §22.12(f)(10)(i) and (iv)).

6. Appellants desire to allow the Facility to be used for hosting family reunions, birthday parties, weddings, meetings, and educational farm-tour field trips.

7. The road to the subject property and Facility (Long Delite Road) is accessed from MD Route 63 (Spielman Road).

8. Events will take place mostly on weekends during warmer weather (May-October), will not exceed fourteen (14) events per year, will not continue beyond 9:00 p.m. Eastern time, and would be limited to 99 persons per event.

9. Appellants estimate they will hire one additional full-time employee and 2-3 part-time employees for the proposed use.

10. Portable toilets as allowed by the County Health Department would be placed on the subject property in reasonable proximity to the pavilion.

11. Dust, odors, noise, traffic, and other negative impacts of Appellants' current farming and retail operations have not been a problem in the past. Appellants suggested they might use millings to further reduce dust from traffic on Long Delite Road.

12. No other persons testified, nor were any emails or other correspondence received in favor of or in opposition to the application.

13. No correspondence was received from any government agencies regarding the application.

RATIONALE

PART I - SPECIAL EXCEPTION

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).

Appellants provided testimony and photographic evidence regarding how they intended to use the proposed Facility on the subject property, and how they intended to minimize any deleterious impact from said use. The Board discussed and considered said testimony and photographic evidence given in support of Appellants’ contention that the Business would not present adverse effects greater than other similar uses in the A(R) district. The Board noted that Appellants’ (and their family’s) use of the subject property for many years as a dairy farm with retail sales of dairy products has been uneventful, and that no one testified or submitted correspondence in opposition to the proposed use. The Board further expressed its support for using the Facility for farm education purposes.

In consideration of the foregoing and the Findings of Fact, the Board finds that the current use at the subject property currently has 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, 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 establish and operate a banquet/reception facility upon the subject property is GRANTED, by a vote of 5-0. Said variance is granted upon the condition that operation of the banquet facility will be operated in a manner consistent with the testimony and evidence presented herein and in compliance with all other applicable governmental requirements.

PART II - VARIANCE

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship (Ordinance §§25.2(c) and 25.56).² “Practical difficulty”

² “When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive (“or”), Maryland court 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).

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 variances 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 (Ordinance §25.56(A)).

“Undue hardship” may be found when: (1) strict compliance with the Ordinance would prevent the applicant from securing a reasonable return from or to make reasonable use of the property; and (2) the difficulties or hardships are peculiar to the property and contrast with those of other property owners in the same district; and (3) the hardship is not the result of the applicant’s own actions (Ordinance §25.56(B)).

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).

Appellants request relief from providing a paved parking surface for the proposed Facility as required by the Ordinance (except for handicapped parking spaces, for which they will use pavers). Since said Facility will be served by an existing gravel lane, which lane also supports the existing retail dairy sales area (and does not have impervious parking), the Board is of the opinion that requiring a paved parking area (except for handicapped parking spaces) will be inconsistent with this existing use and circumstances. In addition, an impervious parking area will likely cause a water runoff issue, and in general are disfavored by the Maryland Department of the Environment, especially for agricultural locations.

The Board finds that for the variance requested in this case, the foregoing observations reveals a practical difficulty on Appellant if the Ordinance were strictly enforced. The Board also finds that Appellants have taken appropriate actions to

minimize and/or eliminate negative impacts upon neighboring properties. For these reasons and the Findings of Fact set forth hereinabove, the Board finds that strict compliance would prevent Appellant from using the subject property for a permitted purpose or render conformance unnecessarily burdensome, a lesser relaxation that that applied for would not give substantial relief, and granting the variances will observe the spirit of the Ordinance and secure public safety and welfare.

Therefore, Appellant's request for a variance from the requirement to provide a durable dustless surface for parking associated with the proposed banquet/reception facility to zero square feet, is GRANTED, by a vote of 5-0. Said variance is granted upon the conditions that: 1) paved parking (pavers) will be provided for the required number of handicapped parking spaces for the Facility; and 2) establishment and operation of the proposed banquet/reception facility upon the subject property will be consistent with the testimony and evidence presented herein and in compliance with all other applicable government regulations.

BOARD OF APPEALS

By: Michael Zampelli, Co-Chair

Date Issued: April 1, 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.