

BOARD OF APPEALS

March 16, 2022

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

AGENDA

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 13 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.-**GRANTED**

DOCKET NO. AP2022-006: An appeal was made by Trammell Crowe Company for a variance from the required minimum number of employee/customer parking spaces for warehousing/office use from 1,450 space to 1,105 spaces for future warehousing use on property owned by the appellant and located at 17222 & 0 Sterling Road, 0 Downsville Pike, and 0 Bower Avenue, Williamsport, Zoned Highway Interchange.-**GRANTED**

DOCKET NO. AP2022-007: An appeal was made by John & Cynthia Burtner for a special exception to establish a second dwelling on property currently improved with a dwelling and agricultural use on property owned by the appellant and located at 39 Mount Hebron Road, Keedysville, Zoned Preservation/City of Hagerstown.-**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 March 7, 2022. 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**

MICHAEL JOHNSTON AND BETH JOHNSTON

APPELLANTS

APPEAL No. AP2022-003

* * * * *

OPINION

Michael Johnston and Beth Johnston (hereinafter collectively, “Appellants”) request a variance from the minimum 20 foot front yard setback for the East boundary line to 13 feet for construction of a proposed attached garage on the subject property. The subject property is located at 18913 Waldron Place, Hagerstown, Maryland, and is zoned Residential, Urban. The Board held a public hearing on the matter on March 16, 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 resident owners of the subject property located at 18913 Waldron Place, Hagerstown, Maryland, which they acquired in October 2021. The subject property is zoned Residential, Urban (RU).

2. The subject property is an irregularly shaped lot comprised of approximately 13,397 square feet, improved by a one-story single-family residential dwelling in the Fountain Head subdivision. The dwelling was built in 1949 by a previous owner.

3. The subject property is a corner lot, situate at the intersection of Waldron Place and Lauran Road.¹

¹ Section 9.5(a) of the Ordinance requires that: “A corner lot shall maintain the specified front yard setback along both street frontages.”

4. Appellants plan to renovate the entire dwelling and would like to construct an attached two-car garage on the East side of the dwelling (fronting Lauran Road). The existing attached one-car garage located on the West side of the dwelling will be converted into another bedroom. Appellants each drive electric cars and need a larger garage to accommodate simultaneous indoor charging of both cars. The design calls for the proposed garage to extend beyond the required 20 foot front yard setback by 7 feet.

5. A variance is required to exceed the 20 foot front yard setback in the RU zoning district (Ordinance §9.5(a)).

6. The configuration of the existing dwelling and its placement on the subject property — which significantly limit where the proposed garage may be placed — are not due to any act of Appellants.

7. Many of the dwellings in the vicinity of the subject property have two-car garages, and many of said garages do not meet setback requirements.

8. Appellants provided the Board with a statement of their variance request based on undue hardship, an architectural site plan showing the proposed garage addition in relation to the existing dwelling, and an appeal exhibit showing the metes and bounds of the subject property, the footprint of the existing dwelling and proposed garage addition, and the various distances of the existing dwelling and proposed addition to the required setbacks. These items were all made a part of the record.

9. An email was received and read into the record from a neighbor on Orchard Terrace Road (approximately 1 ½ blocks from the subject property) in support of the requested variance. No other testimony, emails, or correspondence was given or received in support of or opposition to the application.

10. A memo was received and read into the record from the County Division of Engineering noting that a driveway access permit is required for a new driveway onto Lauran Road.

RATIONALE

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” 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).

In this case, Appellants chose to present their case under the criteria for undue hardship. Appellants have requested a variance to allow construction of a proposed attached two-car garage which will accommodate their two electric cars and allow for indoor charging of the same. The Board agreed with the importance of having simultaneous indoor charging capability for both cars. The Board also noted the irregular shape of the lot and the original placement of the existing dwelling and garage by a previous owner, which significantly limits the area in which the proposed garage may be placed. The Board further noted that the size and placement of the proposed garage is not unusual in the Fountain Head subdivision, will enhance the appearance of the home, and will provide a better location for the new driveway and proposed garage than the existing garage/driveway. In consideration of the foregoing and the Findings of Fact, the Board finds that for the variance requested

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).

in this case, requiring strict compliance would prevent Appellants from making a reasonable use of the property, that the difficulties or hardship are peculiar to the property and contrast with those of other property owners in the RU district, and the hardship is not the result of Appellants' own actions.

Therefore, Appellants' request for a variance from the minimum 20 foot front yard setback for the East boundary line (*i.e.*, along Laurant Road) to 13 feet for construction of an attached garage on the subject property is GRANTED, by a vote of 5-0. Said variance is granted upon the conditions that construction of the proposed garage 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 13, 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**

TRAMMELL CROW COMPANY, LLC

APPEAL No. AP2022-006

APPELLANT

OPINION

Trammell Crow Company, LLC, a Delaware limited liability company (hereinafter, "Appellant"), requests a variance from the minimum number of employee/customer parking spaces for warehousing/office use from 1,450 spaces to 1,105 spaces for future warehouse(s) to be constructed on the subject property. The subject property is located at 17222 & 0 Sterling Road and 0 Downsville Pike, Williamsport, Maryland, and is zoned Highway Interchange. The Board held a public hearing on the matter on March 16, 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. Appellant is the representative of property owners DRI/TCC Downsville I, LLC (which owns a portion of the subject property), and DRI/TCC Downsville II, LLC (which owns the other portion of the subject property). The subject property is located at 17222 Sterling Road (Parcel 262; tax account #26-028671), 0 Sterling Road (Parcel 464; tax account #26-038170), and 0 Downsville Pike (Parcel 258; tax account #26-038197), all in Williamsport, Maryland, which the owners acquired on December 30, 2021. The subject property is zoned Highway Interchange (HI).
2. The subject property consists of three (3) irregularly shaped lots

comprised of approximately 142.32 acres in the aggregate, currently unimproved, located on the South side of U.S. Interstate 70, and accessed by Sterling Road on the Southwest boundary of the subject property and by Downsville Pike (MD Route 632) on the Southeast boundary of the subject property.

3. A proposed site plan shows a contemplated reconfiguration of the subject property's three parcels into "Lot 1" (88.12 acres \pm), "Lot 2" (46.71 acres \pm) and "Lot 3" (7.49 acres \pm).

4. Appellant plans to construct two large warehouse-type buildings, one on Lot 1 and one on Lot 2. Depending on the customer(s) interested in the site, a single warehouse-type building may be constructed that spans both across both Lot 1 and Lot 2. In any event, the buildings will also contain office space to support the warehousing activities.

5. Appellant estimates the operations will entail having a maximum per shift of 630 employees in the building on Lot 1, and a maximum per shift of 460 employees in the building on Lot 2.¹ Appellant does not anticipate customers at these buildings.

6. Based on the estimated number of employees, the Ordinance requires a minimum number of parking spaces of 882 for the Lot 1 building, and 568 for the Lot 2 building, for an aggregate of 1,450 spaces (Ordinance §22.12(a) and (b)(1)). Appellant estimates that an additional 3.5 acres would be needed to satisfy these parking requirements. Appellant desires to reduce the required number of parking spaces to 639 and 466, respectively, for an aggregate of 1,105 spaces.

7. Appellant's research for existing and operational warehouses in Washington County shows approximately 65% of the spaces required actually are used; based on this figure, Appellant's request proposes 76% of the required spaces, which should be more than adequate for the proposed operations at the subject property.

8. A variance is required to reduce the number of parking spaces below the minimum required (Ordinance §25.2(c)).

9. Appellant has a proven design philosophy and extensive experience with projects of this type, which is reflected by its estimates of the maximum employees per

¹ The topography of Lot 3 slopes down from the East boundary of Lot 1 and is unsuitable for parking. Appellant testified that Lot 3 likely will be used for storm water management purposes.

shift and the parking spaces needed to support those estimates. Appellant would convert truck/trailer parking spaces to employees spaces if more parking is needed in excess of the reduced numbers requested.

10. Reducing the amount of impervious surface that would be needed for the required number of parking spaces will decrease surface water run-off and allow for decreased quantity and improved quality of the site's storm water management.

11. Appellant provided the Board with a statement to support the proposed variance, an aerial image of the site showing the current boundaries of the site and the three parcels comprising the subject property, and select pages (i.e., cover sheet, general notes, and site & dimensioning plan) of a proposed site plan with extensive details of the site and project. These items were all made a part of the record.

12. The Senior Construction Manager for Appellant and the Project Manager of the surveyor/engineer engaged by Appellant each testified for Appellant. No other person testified in support of or in opposition to the variance application.

13. No emails, memoranda, or correspondence were received in support of or opposition to the application.

RATIONALE

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" 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

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).

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).

In this case, the Appellant did not specify, but presented their case in a manner that implicates the criteria for both practical difficulty and undue hardship. In such a case, the Board need find only that Appellant made a showing that satisfies the criteria for either standard.

Appellant has requested a variance to allow for the required number of parking spaces to be reduced from 1,450 spaces to 1,105 spaces, for future employees working at the proposed warehouse-type buildings planned to be constructed at the subject property. The Board had concerns about the number of employees estimated (and therefore the number of parking spaces needed), especially during "peak seasons," but generally agreed with Appellant's approach in determining said numbers and its extensive experience with such projects. The Board noted that potential tenants for the buildings would be experienced enough to know the number of spaces they would need when deciding whether or not to lease. The Board also noted the narrow and irregular geometry of the subject property, which limits where the proposed buildings and parking areas may be located.

In consideration of the foregoing and the Findings of Fact, the Board finds that for the variance requested in this case, requiring strict compliance would render conformance unnecessarily burdensome, that denying the variance would do substantial injustice to the Appellant, and a lesser relaxation than that applied for would not give substantial relief, and granting the variance will observe the spirit of the Ordinance and secure public safety and welfare.

Therefore, Appellant's request for a variance from the required minimum of 1,450 parking spaces to 1,105 parking spaces for the proposed warehouse-type buildings to be constructed on the subject property is GRANTED, by a vote of 5-0. Said variance is granted upon the conditions that construction of the proposed building and parking areas 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 13, 2022

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

JOHN BURTNER & CYNTHIA BURTNER

APPEAL No. AP2022-007

APPELLANTS

* * * * *

OPINION

John Burtner and Cynthia Burtner (hereinafter collectively, "Appellants") request a special exception to allow the construction of a proposed second single-family dwelling on the subject property, which is currently in agricultural use and improved with a single-family dwelling. The subject property, owned by Appellants, is located at 39 Mount Hebron Road, Keedysville, Maryland, and is zoned Preservation. The Board held a public hearing on the matter on March 16, 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 own the subject property located at 39 Mount Hebron Road, Keedysville, Maryland since 2011.¹ The subject property is zoned Preservation (P).
2. The subject property is improved by an owner-occupied, two-story single-family dwelling, situated on approximately 109.65 acres of land, which has been actively farmed by Appellants and their family for more than 40 years. In 2003, the farm was placed in the State of Maryland Rural Legacy Program.²

¹ Prior the hearing, Appellants conveyed the subject property to the Hebron Homestead Irrevocable Trust Agreement, of which Appellants' son (Jacob Burtner) and daughter (Megan Burtner) are the trustees. Said trustees provided written authorization for Appellants of record to proceed with the appeal.

² The goal of this program is "to preserve large, contiguous tracts of land and to enhance natural resource, agricultural, forestry and environmental protection while supporting a sustainable land base for natural resource based industries." (see <https://dnr.maryland.gov/land/Pages/RuralLegacy/home.aspx>)

3. Appellants desire to construct a second two-story single-family dwelling on the subject property, to be occupied by Appellants' son (Jacob), daughter-in-law, and their three minor children. Jacob provides significant assistance with farming activities on the subject property.

4. The contract Appellants have with the State of Maryland Rural Legacy Program and Washington County allows for "one (1) primary residence" and "one (1) accessory residence...[which] includes, but is not limited to...tenant houses..." Appellants have determined that the proposed second dwelling falls within this allowance as a "tenant house."

5. Section 4.5 of the Ordinance limits lots in the P Zoning District to one (1) principal permitted residential use; thus, a special exception is required to construct a second single-family dwelling on the subject property.

6. The County has identified three separate potential septic areas, of which Appellants have selected the one that is approximately in the center of the subject property, no closer than 475' from the nearest property boundary. A proposed driveway to the second dwelling will connect to an existing deeded driveway easement.

7. Appellants desire to keep the family farm "in the family," and having the second dwelling will make it easier for that to be realized, and will not require subdivision of the subject property.

8. Negligible traffic, dust, noise, or odors would be created by the proposed second dwelling, and lighting would be no more than for a typical single-family dwelling.

9. Appellants testified they have received verbal support from their neighbors, most of whom are related to Appellants.

10. Appellants provided the Board with a statement of their special exception request, a copy of the pertinent limitations on additional construction and improvements from their Rural Legacy Program contract, an aerial image of the subject property (marked-up to show existing and proposed structures and driveways, and the approximate distances from the proposed second dwelling to several boundary lines of the subject property), and four (4) hand-sketches of the proposed second dwelling floor plans. These items were all made a part of the record.

11. One neighbor who owns 400 acres nearby which is also in land preservation program testified that he is pleased to support the application, especially given that it will allow Appellants' family members to live on the subject property and continue to maintain the farming activities thereon.

12. No other persons testified or provided written communications in support of or in opposition to the application.

13. A memo was received and read into the record from the Senior Plan Reviewer and Floodplain Manager in the County's Division of Engineering, noting that flood plain is located on the subject property, but the location of the proposed dwelling is outside of the flood plain.

14. A memo was received and read into the record from the Maryland Department of Health that "each dwelling unit [on the subject property] will need their own well and will need to establish their own 10,000 sq. ft. septic reserve area."

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, Appellants testified that the proposed dwelling will not generate any additional noise, odor, dust, or traffic, that the distances of the proposed dwelling is sufficiently far from neighbors so as not to disturb them or compromise the viewshed. In addition, Appellants testified that the subject property has been placed into an irrevocable trust and the proposed dwelling will be occupied by family members who work on the farm.

The Board discussed and considered the testimony and other evidence given in support of Appellant's contention that the proposed dwelling would not present adverse effects greater than other similar uses in the P Zoning District. The Board also read into evidence and considered the testimony given by the nearby neighbor, and the memos from the Maryland Department of Health, and the County Division of Engineering. The Board favors Appellants' placement of the property in trust, and supports Appellants' proposed use of providing a residence for their son and his family, and keeping the farm family-owned and operated.

In consideration of the foregoing and the Findings of Fact, 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, 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, Appellant’s request for a special exception to construct a second single-family dwelling as proposed on the subject property is GRANTED, by a vote of 5-0. Said special exception is granted upon the condition that the construction and use of said second dwelling 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: Michael Zampelli, Co-Chair

Date Issued: April 13, 2022

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