

**BOARD OF APPEALS**

**May 11, 2022**

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

**AGENDA**

**DOCKET NO. AP2022-014:** An appeal was made by The Bowman Group LLC for a special exception to establish a truck stop on property owned by the appellant and located at 15919&15935 Spielman Road, Williamsport, Zoned Highway Interchange. – **POSTPONE TILL MAY 25, 2022**

**DOCKET NO. AP2022-016:** An appeal was made by Chick-Fil-A for a variance from the required 40 ft. front yard setback to 22 ft. for proposed drive-thru canopy and a variance from the required 25 ft. setback from the street right-of-way to 15 ft. for the proposed freestanding sign on property owned by Bowman 2000 LLC and located at the corner of Sharpsburg Pike and Col. Henry K. Douglas Drive, Hagerstown, Zoned Highway Interchange. - **GRANTED**

**DOCKET NO. AP2022-017:** An appeal was made by Jamie & Jacob Harrison for a variance from the required 100 ft. setback for an animal husbandry structure (chicken coop) to 11 ft. from the rear property line and 14 ft. from the side property line on property owned by the appellants and located at 10743 Van Lear Drive, Williamsport, Zoned Residential Transition. - **GRANTED WITH CONIDITIONS**

**DOCKET NO. AP2022-018:** An appeal was made by Cascade Properties LLC for a special exception to establish an HVAC manufacturing operation in existing building on property owned by the appellant and located at 24910 Reservoir Road, Cascade, Zoned Special Economic Development. - **GRANTED**

**DOCKET NO. AP2022-019:** An appeal was made by NP National Like Logistics LLC for a variance form the required minimum number of employee/customer parking spaces for warehousing/office use from 1,139 spaces to 715 spaces on property owned by the appellant and located at 16822 National Pike, Hagerstown, Zoned Planned Industrial. - **GRANTED**

**DOCKET NO. AP2022-020:** An appeal was made by Kent & Sheila Reid for a special exception to establish an alcohol production facility with tasting room in the garage of the existing single-family dwelling on property owned by the appellants and located 17039 Castle Hill Road, Hagerstown, Zoned Agricultural Rural.- **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 Katie Rathvon at 240-313-2464 Voice, 240-313-2130 Voice/TDD no later than May 2, 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**

**CHICK-FIL-A INC.**

**APPEAL No. AP2022-016**

**APPELLANT**

\* \* \* \* \*

**OPINION**

Chick-fil-A, Inc., a Georgia limited liability company (hereinafter, "Appellant"), requests a variance from the minimum 40 foot front yard setback requirement to 22 feet for placement of a proposed drive-through restaurant canopy, and a variance from the minimum 25 foot setback from the street right-of-way to 15 feet for placement of a proposed freestanding sign, each located on the subject property. The subject property is located at the northeast corner of the intersection at Sharpsburg Pike (MD Route 65) and Col. Henry K. Douglas Drive, Hagerstown, Maryland (tax account ID# 10-012627), zoned Highway Interchange. The Board held a public hearing on the matter on May 11, 2022.

The appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County, Maryland (hereinafter, "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. The subject property is located at the northeast corner of the intersection at Sharpsburg Pike (MD Route 65) and Col. Henry K. Douglas Drive, Hagerstown, Maryland (tax account ID# 10-012627), is zoned Highway Interchange (HI), and has been owned by Bowman 2000, LLC, since December 2000. Said owner has authorized Appellant to apply for the variances requested.
2. The subject property is an irregularly shaped lot comprised of approximately 2.05 acres, and currently is vacant.

3. The subject property is the proposed location for an approximately 4,997 SF Chick-Fil-A restaurant with indoor and outdoor seating areas, a three-lane drive-through, parking, and other infrastructure elements (hereinafter collectively, the Project”).

4. The general requirements for setbacks in the HI zoning district are set forth in Section 19.7(B) of the Ordinance. In addition, since the subject property fronts on two (2) public roads, it is considered to have two front yards (see Ordinance, Article 28A, “Lot” definition, part D), with each front yard in the HI zoning district having a setback requirement of 40 feet.

5. Appellant’s Project plan submitted to the Board shows the canopy over the southern portion of the drive-through extending to 23.63 feet from the subject property boundary along Col. Henry K. Douglas drive. The canopies are necessary design elements to provide cover and weather protection for the restaurant employees taking orders in the drive-through lanes. Appellant is requesting a variance from the 40 foot front yard setback requirement to a distance of 22 feet, to allow for reasonable flexibility in the final design (and avoid having to come back to the Board for additional relief). In all other respects, said canopies are proposed to be located in compliance with applicable setback requirements.

6. The general requirements for freestanding sign setbacks in the HI zoning district are set forth in Section 22.23(e) of the Ordinance. One of said requirements specifies “that no part of the supporting structure [of a freestanding sign] is less than twenty-five (25) feet from the street right-of-way.”

7. Appellant’s Project plan calls for the supporting monopole structure of a freestanding sign to be located near the southwest corner of the front yard fronting on Sharpsburg Pike a distance of 15 feet from the street right-of-way, thus prompting the request for a variance. In all other respects, said sign is proposed to be located in compliance with applicable freestanding sign requirements.

8. The subject property is unique in a manner different from other properties in the surrounding area, in that the property fronts public roads on two (2) sides, thus having to comply with the front yard setback requirement for both of those sides. Additionally, the Property has an egress-only access point to Col. Henry K. Douglas Drive, which imposes practical restrictions on the Property with regard to safe vehicular access.

9. Appellant's counsel and Appellant's project engineer testified in support of the application for variances. Appellant's counsel submitted a detailed written statement in support of the application, along with a site plan showing details of the Project, and drawings representing the proposed restaurant exterior and freestanding sign design and dimensions. All of said items were received into the record.

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

11. A memorandum was received and read into the record from a Senior Plan Reviewer/Floodplain Manager of the Washington County Division of Engineering stating that the Division had "no comment on the setback reduction for the canopy." In addition, the memorandum stated:

"There is an existing Water Quality Swale located east of the street Right-of-Way line extending from approximately 15 feet and a Potomac Edison Right-of-Way extending approximately 9 to 10 feet from the street Right-of-Way. Therefore, we recommend no less than a 15 feet setback from the street Right-of-Way should be maintained for stormwater management and easement purposes."

#### **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).<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 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

<sup>1</sup> "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).

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, Appellant's counsel testified that the circumstances (as noted by the Board in the Findings of Fact set forth hereinabove) present a practical difficulty if Appellant must comply strictly with the setback requirements for the proposed canopy and freestanding sign. Specifically, he pointed out that the Property's unique corner location and egress situation onto Col. Henry K. Douglas Drive make it impractical to situate the proposed restaurant building, parking areas, drive-through aisles, canopies, and other necessary design elements in any other way without significantly compromising the traffic, operational, and safety elements of the Project. Furthermore, he testified that having the freestanding sign along the more-heavily trafficked Sharpsburg Pike will better draw patrons to the site, which is vital to the economic success of the Project.

In consideration of the foregoing and the Findings of Fact, the Board finds that for the variances requested in this case, and upon the testimony and evidence presented herein, that the uniqueness and existing limitations of the subject property, and the impracticality of requiring strict compliance with the Ordinance, all combine to result in a practical difficulty for Appellant if the Ordinance were strictly enforced. Moreover, 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 variances on the subject property from: (1) the minimum 40 foot front yard setback requirement along Col. Henry K. Douglas Drive to 22 feet for construction and location of a proposed drive-through canopy; and (2) the minimum 25 foot setback requirement from the public road right-of-way along Sharpsburg Pike to 15 feet for the construction and location of the supporting monopole structure for a freestanding sign, are GRANTED, each by a vote of 5-0. Said variances are granted upon the conditions that construction and location upon the subject property of the proposed drive-through canopy and the proposed supporting monopole structure for a freestanding sign are completed in a manner 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: June 7, 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**

**JAMIE HARRISON AND JACOB HARRISON**

**APPEAL NO. AP2022-017**

**APPELLANTS**

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**OPINION**

Jamie Harrison and Jacob Harrison (hereinafter collectively, "Appellants") request a variance from the required minimum 100 foot setback to 11 feet for the rear property line and to 14 feet for the side (south) property line for an existing animal husbandry structure located on the subject property (Ordinance §5A.5(a), modified by §22.94(a)). The subject property is located at 10743 Van Lear Drive, Williamsport, Maryland, and is zoned Residential, Transition. The Board held a public hearing on the matter on May 11, 2022.

The appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County, Maryland (hereinafter, "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 10743 Van Lear Drive, Williamsport, Maryland (since July 2020). The subject property is zoned Residential, Transition (RT).

2. The subject property is a nearly trapezoidal-shaped lot comprised of approximately 0.3660 acres, improved by a single-family dwelling with several accessory structures, enclosed on nearly all sides by a 6 foot high privacy fence (the fence along the south boundary line is owned by the abutting neighbor). The animal husbandry structure (hereinafter, the "Structure") at issue herein is an existing 8' x 10' garden shed (on the subject property when purchased by Appellants) located in the corner where the south boundary line (85 feet fenced) and the rear boundary line (146 feet fenced) meet.



3. Section 22.94(a) of the Ordinance sets the setback requirement for animal husbandry structures at “a minimum building setback of 100 feet from the property line or public road right-of-way unless exempted under Section 22.92(b)” (said exemptions do not apply in the instant matter).

4. Appellants currently have five (5) six-week old chickens (and will have no more than ten (10) chickens) and desire to house them in the Structure. The rear of the Structure is located 14 feet from the rear boundary line, and the south-facing side of the Structure is located 11 feet from the south boundary line, thus prompting the appeal at hand. The other sides of the Structure are more than 100 feet from their corresponding boundary lines and public road right-of-way.

5. There is nowhere on the subject property the Structure can be moved to achieve compliance for all boundary lines. Appellants stated their belief that the current location of the Structure is the maximum distance from the most neighbors.

6. Appellants have contacted the University of Maryland Extension Office for a nutrient management plan and the Soil Conservation District for a waste management plan.

7. Abutting and opposing neighboring properties include a church and several similarly sized lots improved by single-family dwellings.

8. Appellants submitted to the Board two letters in support of Appellants' application, which were read and received into the record. No other persons testified or provided evidence in support of the application, and nothing was received from any government agencies.

9. One neighbor directly across the street (10738 Van Lear Drive) testified in opposition to Appellants' request. His primary concern was the possibility of the spread of avian flu or other bird-related illnesses, and he provided the Board with several articles on this topic. He also stated that the existing subdivision plat (folio 326A) for the properties in the development (including the subject property) contains a declaration of covenants, one of which prohibits the maintenance of livestock on any lot.

10. Appellants testified they will not keep any roosters on the subject property, and they will replace the fence (with a similar fence) along the side (south)

yard in the event the abutting neighbor (or their successors in title) removes or allows the fence to fall into disrepair, and if chickens are present on the subject property. Such replacement shall be at the subject property owner's (and their successors in title's) expense.

#### 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).<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 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).

<sup>1</sup> "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, Appellants' testified that the circumstances (as noted by the Board in the Findings of Fact hereinabove) present a practical difficulty (an impossibility, in fact) if Appellants must strictly comply with the setback requirements. They testified as to their belief that the current location of the Structure is the best location on the subject property to minimize any negative impacts to surrounding properties.

The Board concurs that for the variance requested in this case, the current placement of the Structure is the best possible location, and the impossibility of moving the Structure to a compliant location, combine to impose an undue hardship on Appellants if the Ordinance were strictly enforced. The Board notes that Appellants properly have contacted the appropriate agencies to develop plans for nutrient and waste management. The Board has also considered the testimony and evidence provided by the neighbor opposing Appellants' application and believe that the risk of avian spread illness from the few chickens to be maintained at the subject property (especially with the fence enclosure) to be very minimal. The Board also notes that while Appellants' may have to deal with what appears to be a binding covenant prohibiting livestock on the subject property, the Board does not have the authority to interpret the application of such a covenant nor use such a covenant as the ground for denying an appeal.

In consideration of the foregoing and the Findings of Fact, the Board finds that for the variances requested in this case, and upon the testimony and evidence presented herein, that the uniqueness and existing limitations of the subject property, and the impossibility of requiring strict compliance with the Ordinance, all combine to result in a practical difficulty for Appellants if the Ordinance were strictly enforced. Moreover, the Board finds that strict compliance would prevent Appellants 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, Appellants' request for a variance from the minimum 100 foot set back 11 feet for the rear property line and to 14 feet for the side (south) property line for an existing animal husbandry structure on the subject property is GRANTED, by a vote of 4-1. Said variances are granted upon the conditions that: 1) no roosters will be permitted on the subject property; 2) the fence along the side (south) yard will be replaced (on the north side of the subject property's south boundary line) with a

privacy fence of similar height in the event the abutting neighbor (or their successors in title) removes or allows the fence to fall into disrepair, and if chickens are present on the subject property. Such replacement shall be at the Appellants' (and their successors in title's) expense; and 3) the location of the existing animal husbandry structure will continue to 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: May 11, 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**

**CASCADE PROPERTIES, LLC**

**APPEAL NO. AP2022-018**

**APPELLANT**

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**OPINION**

Cascade Properties, LLC, a Maryland limited liability company (hereinafter, "Appellant") requests a special exception use to establish and operate a manufacturing and/or assembly business in an existing structure on subject property containing approximately 36.81 acres, owned by Appellant and improved by "Existing Building 517", with an address of 24910 Reservoir Road, Cascade, Maryland, and located in the former Fort Ritchie Military Reservation, and zoned Special Economic Development District. The Board held a public hearing on the matter on May 11, 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 has owned the subject property containing approximately 36.81 acres and improved by "Existing Building 517", with an address of 24910 Reservoir Road, Cascade, Maryland in the former Fort Ritchie Military Reservation since April 2021. The subject property is zoned Special Economic Development (SED).
2. Existing Building 517 (hereinafter, the "Building") is an approximately 27,000 square foot one-story building originally used as a post exchange by the U.S. Army. The Building is currently vacant, as it has been for many years.
3. Appellant desires to allow use of the Building by a local contractor

(which intends to relocate its current operations to the Building) to establish and operate a manufacturing and/or assembly business for HVAC systems, said systems to be delivered to and fit/installed offsite at client locations.

4. Section 19C.3 of the Ordinance allows for a factory for the manufacture and/or assembly of certain types of equipment (or a functionally similar special exception use) in the SED District, but only by special exception; thus, Appellant seeks such a special exception for the proposed use on the subject property.

5. The Building and site in question is located more than 1000 feet from the property boundaries in all directions. No additional lighting will be installed. All equipment, machinery, tools, and materials will be stored inside the Building. The contractor will have no more than 15 employees on site, and there will be occasional parts deliveries during normal working hours (8:00 a.m. to 5:00 p.m., Monday through Friday), but no customer traffic, as all orders are received remotely.

6. The existing construction of the building provides adequate sound insulation, and there will be no emissions of odors, dust, or fumes.

7. Appellant provided written testimony (received into the record) that “revitalization” of the former Fort Ritchie property is a key objective of the County, and the proposed use will assist a local business and lessen opportunities for vandalism of the currently vacant Building.

8. Appellant provided the Board (received into the record) with an exhibit drawing of the subject property and surrounding properties prepared by Frederick, Seibert & Associates, Inc., with the Building clearly identified thereon.

9. There was no correspondence or testimony from any persons in favor of or opposed to the application, and no correspondence received from any government agencies.

#### **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 representative testified regarding the proposed use in the Building, and discussed the various factors that will ensure there will not be any additional nor significant noise, odor, dust, or traffic.

The Board discussed and considered the testimony and other evidence given in support of Appellant's contention that the proposed use would not present adverse effects greater than other similar uses in the SED Zoning District. The Board indicated that the Applicant appears to have addressed all of the elements needed to secure the requested special exception, that the proposed use is functionally similar to the manufacturing and/or assembly special exception uses identified in Section 19C.3 of the Ordinance, and is an appropriate and positive use of the subject property.

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 use to establish and operate a manufacturing and/or assembly business in Existing Building 517 on the subject property as proposed is GRANTED, by a vote of 5-0. Said special exception is granted upon the condition that the establishment and operation of said business 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: June 2, 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**

**NP NATIONAL PIKE LOGISTICS I, LLC**

**APPEAL NO. AP2022-019**

**APPELLANT**

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**OPINION**

NP National Pike Logistics I, 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 1,139 spaces to 715 spaces for future warehouse(s) to be constructed on the subject property. The subject property is located at 16822 National Pike, Hagerstown, Maryland, and is zoned Planned Industrial. The Board held a public hearing on the matter on May 11 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 owner of the subject property located at 16822 National Pike, Hagerstown, Maryland, which the owner acquired on December 17, 2021. The subject property is zoned Planned Industrial (PI).

2. The subject property consists of an irregularly shaped lot comprised of approximately 133.34 acres in the aggregate, currently improved by an early 19<sup>th</sup> century single-family dwelling, and located on the North side of the National Pike (US Route 40), approximately two-thirds of a mile East of Greencastle Pike (MD Route 63).

3. A proposed site plan shows the locations on the subject property of two



(2) proposed large warehouse-type buildings (including office space therein to support the warehouse operations), together with two commercial entrances (from US Route 40), interior private roads, trailer drop areas, parking, and other site infrastructure. The proposed buildings would occupy an area of almost 1,650,000 square feet (1,003,456 SF and 631,394 SF).

4. The proposed tenant for the larger warehouse has informed Appellant that the parking spaces needed to support tenant's expected shift employee counts are much less than the number required by the Ordinance. For the smaller warehouse (which has no proposed tenant at this time), Appellant is requesting 70 spaces less than that required by the Ordinance.

5. Based on the parking space ratios for the two (2) warehouses, the minimum aggregate number of parking spaces for "Warehouse Establishments" is 1,139 spaces (see Ordinance §22.12(a) and (b)(1)). Appellant desires to reduce the required aggregate number of parking spaces from 1,139 to 715. All required handicap parking spaces will be maintained.

6. Appellant estimates that approximately four (4) additional acres of land would be needed to comply with the parking space requirements of the Ordinance, all of which would become additional impervious surface area, exacerbating surface water run-off.

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 63% of the required spaces, which should be more than adequate for the proposed (and anticipated) 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 supports its estimates of the maximum employees per shift and the parking spaces needed to support those employees.

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 select pages (*i.e.*, cover sheet, and overall 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. A representative for Appellant and the Project Manager of the surveyor/engineer engaged by Appellant each testified for Appellant. No other person testified or provided written correspondence or emails in support of or in opposition to the variance application.

13. An memorandum was received and read into the record from the Senior Plan Reviewer in the Washington County Division of Engineering, stating:

“The Developer is working with our office to dedicate right-of-way and construct the proposed eastern entrance and access road in such a manner that it may be converted into a public roadway in the future. This was required to provide connectivity within the greater PI zoned district and consolidated access to US 40 (National Pike). Granting of this variance would allow Developer more flexibility in the layout of their remaining site.”

14. An email was received and read into the record from the Maryland Department of Health indicating its approval of the variance 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).<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 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)).

<sup>1</sup> “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).

“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).

Appellant has requested a variance to allow for the required number of parking spaces to be reduced from 1,139 spaces to 715 spaces, for future employees working at the proposed warehouse-type buildings planned to be constructed at the subject property. The Board generally agrees with Appellant’s approach in determining said numbers and takes note of Appellant’s extensive experience with such projects. The Board is of the opinion 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 subject property’s irregular and unique geometry, the topography limitations to the West, the areas where storm water management must be placed, and the possibility of a public road bisecting of the subject property, all of which limit 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 prevent Appellant from securing a reasonable return from or make reasonable use of the property, that the difficulties or hardships are peculiar to the property, and the hardship is not the result of Appellant’s own actions.

Therefore, Appellant’s request for a variance from the required minimum of 1,139 parking spaces to 715 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: June 6, 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**

**KENT REID AND SHEILA REID**

**APPEAL NO. AP2022-020**

**APPELLANTS**

\* \* \* \* \*

**OPINION**

Kent Reid and Sheila Reid (hereinafter collectively, “Appellants”) request a special exception to allow the establishment of a alcohol production facility with a “tasting room” in an existing garage structure at the subject property. The subject property is located at 17039 Castle Hill Road, Hagerstown, Maryland and is zoned Agricultural (Rural). The Board held a public hearing on the matter on May 11, 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 17039 Castle Hill Road, Hagerstown, Maryland (since May 2007). The subject property is zoned Agricultural (Rural) (A(R)).
2. The subject property is comprised of approximately 5.06 acres, and is improved by a one-story, single-family dwelling and several accessory structures.
3. Appellants desire to establish and operate an alcohol production facility (wine only) with an adjoining tasting room<sup>1</sup>, by converting an existing garage (approximately 616 SF) attached to the dwelling on the subject property. Said facility will be located approximately 200 feet from Castle Hill Road.

<sup>1</sup> An “Alcohol Production Facility” is defined as: “An establishment for the manufacturing, bottling, packaging, storage, promotion and sale of alcoholic beverages produced in accordance with a state-issued manufacturing license. Accessory uses at such facilities may include tasting rooms, accessory food sales related to alcohol production, sales of novelty and gift items related to the manufacturing operation, and the sale of alcoholic beverages produced by the licensee. (Ordinance, Article 28A, Definitions)

4. A special exception is required to operate an alcohol production facility in the A(R) zoning district (Ordinance §3.3(1)(K)).<sup>2</sup>

5. Appellants propose to produce and sell wine made from fruit grown on approximately ½ - 1½ acres of arable land on the subject property. In addition to marketing their wine at farmers markets and fairs, they anticipate production of approximately 200 cases of wine per year. Tasting events and sales of wine will be by appointment only (limited to 4-8 people per appointment) and on fixed days and times (Fridays, 2pm-6pm; Saturdays, 12pm-6pm; and Sundays, 12pm-6pm).

6. Appellants do not expect to have more than two (2) employees (themselves). Deliveries of supplies will be infrequent. Storage of all materials, equipment, and products will be indoor.

7. Parking spaces will be on a macadam area (currently lighted) adjacent to the existing garage and accessible from Castle Hill Road.

8. Appellants plan to have a temporary sign placed at the front of the subject property to alert customers to their facility.

9. The manufacturing process will involve cold fermentation only. All solid waste products produced will be composted in an environmentally appropriate manner. There is no noise, dust, or fumes, and odors are minimal and quickly dispersed.

10. Appellants provided the Board with a detailed written summary of the particulars of the facility operations, a boundary survey of the subject property showing the locations of all structures thereon, a hand-drawn depiction of the driveway and parking area next to the facility, and a hand-drawn proposed floor plan for both the alcohol production facility (comprising approximately 270 SF) and the adjoining tasting room (comprising approximately 200 SF). All items were received into the record.

11. In addition, Appellants provided the Board with letters of support for the special exception application received from all six (6) neighbors abutting or opposing the subject property. The neighbor immediately to the east at 17049 Castle Hill Road (whose husband had signed one of the letters of support), testified she is also an owner of their property, that her husband has brain cancer, and they have three (3) small children. She further testified that she is concerned about the increased traffic to and

<sup>2</sup> The Table of Land Uses (Ordinance, Table No. 3.3(1)) was amended 11/12/19 (RZ-19-005/ORD-2019-23) to include Alcohol Production Facility as a special exception use in, among others, the A(R) zoning district.

from the subject property that will result from the proposed use, and the danger such traffic may pose to her family (especially her children). She also testified as to her concern about the affect on the value of her and her husband's property.

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

13. An email was received and read into the record from the Maryland Department of Health which stated:

"Water supply would need to be tested and evaluated. A food service facility plan review and permit would be required. The septic system would need to be upgraded (MDH would be involved); testing is limited to wet season testing. Currently the property is served by a sand mound septic system."

#### **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 regarding particulars of the proposed establishment and operation of the alcohol production facility and the adjoining tasting room. They also provided exhibits showing the location of the subject property in relation to their neighbors, and letter of support from all six (6) abutting and opposing neighbors. Testimony was received from the owner of one abutting property who had concerns about traffic safety and property value impacts from the facility operations.

The Board discussed and considered the testimony and 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 also considered all of the letters from neighbors in support of Appellants' application. Finally, the Board considered the testimony given by Appellants' next-door neighbor who expressed her concerns in opposition to Appellants' application.

The Board noted that there appears to be significant distance and a natural tree line between the proposed facility and the neighbor in opposition that will minimize

many of the potential negative impacts to the property of the neighbor in opposition. The Board also expressed that the proposed facility is quite small, will operate by appointment only, with a limited number of persons per appointment, on a very reasonable schedule of limited number of days and hours during the week, and with a lack of other negative sensory elements that might impact surrounding properties. The Board finds that the testimony given by the neighbor in opposition to the application, while important, is insufficient to overcome the weight of Appellants' testimony and evidence, the written evidence of others in support of the Business at the subject property, and the Board's own consideration of all the evidence before it.

The Board finds that the proposed use at the subject property will result in 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 these reasons, and In consideration of the foregoing and the Findings of Fact, 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 an alcohol production facility (with an adjoining tasting room) in an existing garage attached to the single-family dwelling at the subject property is GRANTED, by a vote of 5-0. Said variance is granted upon the condition that establishment and operation of said facility will be carried out 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: June 7, 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.