

BOARD OF APPEALS

June 8, 2022

Washington County Courthouse, 24 Summit Avenue, Court Room 1, 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. **-CONTINUED TO JUNE 22 HEARING FOR DELIVERATION AND DECISION.**

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 130, 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**

THE BOWMAN GROUP, LLC
Appellant

*

*

Appeal No.: AP2022-014

*

*

* * * * *

OPINION

The Bowman Group, LLC (hereinafter "Appellant") requests a special exception to establish a truck stop at the subject property. The subject property is located at 15919 and 15935 Spielman Road, Williamsport, Maryland and is zoned Highway Interchange. The Board held a public hearing in this matter on June 8, 2022, however deliberations were postponed and subsequently conducted at a public hearing on June 22, 2022.

This appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County 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 15919 and 15935 Spielman Road, Williamsport, Maryland and is owned by Appellant. The subject property is zoned Highway Interchange.

2. The subject property consists of Parcel 148, which is approximately 9.73 acres and 2.08 acres of adjoining Parcel 149 which will be used for ingress and egress. The subject property is situated at the southwest corner of the intersection of Spielman

Road and Lappans Road, and across from Governor's Lane Blvd.

3. Both parcels are currently used for trailer parking. Appellant plans to continue using Parcel 149 for trailer parking and will install gated access with fencing.

4. There are warehouses, distribution, and manufacturing businesses located along Governor's Lane Blvd within the Planned Industrial zoning district.

5. Appellant proposes to construct a convenience store and gas station which have already been approved, and the proposed truck stop at the subject property. The convenience store would consist of a 6,800 square foot building with twelve (12) fueling pumps for cars. There would also be forty-seven (47) parking spaces. The truck stop portion of the proposed use would contain five (5) fueling lanes under a canopy, along with thirty (30) truck parking spaces. The truck stop portion would have separate ingress and egress and is separated by greenspace from the convenience store and gas station.

6. The proposed use will not have any accommodations or showers and will not provide any truck repairs or maintenance. Trucks will be able to refill, patronize the retail convenience and food opportunities and rest at the subject property.

7. Appellant proposes to install a dedicated left turn lane from Spielman Road and a separate right turn lane from Lappans Road to serve the subject property. Appellant also proposes to improve the traffic signal at the intersection of Spielman Road and Lappans Road to allow for turning traffic from Spielman Road and to avoid congestion on Lappans Road.

8. Appellant proposes to make grading cuts and to fill other areas to improve sight distance along Spielman Road. The projected sight distance exceeds the required minimum in both directions.

9. Appellant has a previously approved traffic study from 2016 based on a higher intensity of use than is proposed in this case. The intersection at Spielman Road

and Lappans Road is currently rated as at “B” and is projected to be rated as a “B” or “C” upon completion of the proposed project.

10. The closest residence is located at 15942 Spielman Road, Williamsport, Maryland and is owned by James and Pamela Black.

Rationale

There is considerable history surrounding the approval of uses at the subject property. In 2001, an appeal was filed asserting administrative error on the part of the Zoning Administrator related to the subject property.¹ Bowman-Spielman, LLC proposed to develop the subject property and the Zoning Administrator determined that the proposed use did not constitute a travel plaza/truck stop, thus avoiding the need for a special exception. The Board denied Mr. Swope’s appeal and upheld the Zoning Administrator’s determination which was later overturned. In 2018, another group of citizens challenged Bowman-Spielman, LLC’s site plan approval for a mixed used retail, food, convenience and fueling station at the subject property.² After a lengthy hearing before the Board of Appeals, the site plan was approved, and the opponents again sought judicial review in the Circuit Court for Washington County. The Circuit Court for Washington County, Judge John H. Tisdale presiding, found that the proposed use was a “truck stop” requiring a special exception but that the burden had been met as to approval of the conveniences store and gas station use.³ The decision was later upheld in an unreported opinion of the Court of Special Appeals.⁴

In the instant case, the Board is presented with a special exception request to

¹ *Allen Swope*, Appeal No. AP2001-108.

² *Estate of Ned Amsley, et al.*, Appeal No. AP2017-031

³ *In the Matter of Jane Hershey, et al.*, Case No. C-21-CV-18-377.

⁴ *Bowman-Spielman, LLC v. Jane Hershey, et al.*, No. 3298, September Term, 2018.

establish a truck stop at the subject property. The nature of the proposed use has changed slightly since the last hearing in 2018 and Appellant has revised its plan for the property accordingly. The Board heard from Appellant's witnesses and several witnesses who opposed the project, and then undertook a detailed analysis of the evidence and criteria.

Special Exception

The Board has authority to grant a special exception pursuant to Section 25.2(b) of the Zoning Ordinance for Washington County, Maryland. A special exception is defined as "a grant of a specific use that would not be appropriate generally or without restriction; and shall be based upon a finding that the use conforms to the plan and is compatible with the existing neighborhood." Article 28A. In addition, Section 25.6 sets forth the limitations, guides, and standards in exercise of the board's duties and provides:

Where in these regulations certain powers are conferred upon the Board or the approval of the Board is required before a permit may be issued, or the Board is called upon to decide certain issues, the Board shall study the specific property involved, as well as the neighborhood, and consider all testimony and data submitted, and shall hear any person desiring to speak for or against the issuance of the permit. However, the application for a permit shall not be approved where the Board finds the proposed building, addition, extension of building or use, sign, use or change of use would adversely affect the public health, safety, security, morals or general welfare, or would result in dangerous traffic conditions, or would jeopardize the lives or property of people living in the neighborhood. In deciding such matters, the Board shall consider any other information germane to the case and shall give consideration to the following, as applicable:

- (a) The number of people residing or working in the immediate area concerned.
- (b) The orderly growth of a community.
- (c) Traffic conditions and facilities
- (d) The effect of such use upon the peaceful enjoyment of people in their homes.
- (e) The conservation of property values.
- (f) The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values.
- (g) The most appropriate use of the land and structure.

- (h) Decision of the courts.
- (i) The purpose of these regulations as set forth herein.
- (j) Type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches, and the like.

For the reasons set forth herein, the Board concludes that the special exception should be granted.

The general nature of the immediate area is one of mixed commercial and industrial, as well as some remote agricultural uses. The subject property is also near Interstate 81 and its interchange with Lappans Road. Across the street on Governor's Lane Blvd, there are multiple manufacturing, distribution, and freight operations as well as several commercial uses along Lappans Road. Other than the residence owned by Mr. and Ms. Black, there are no homes in close proximity to the subject property.

In terms of the orderly growth of the community, the subject property is currently zoned Highway Interchange. Among the permitted uses not requiring board approval, are truck terminals and warehouses, manufacturing, amusement parks, and retail businesses pursuant to the Ordinance. It is likely one or more of those permitted uses would have impacts on the surrounding area and would garner strong opposition. The proposed project is an improvement to the existing trailer parking, and more suitable than some other, principally permitted uses at the subject property. Moreover, the proposed improvements to surrounding roads and the intersection at Lappans Road will be an upgrade to existing inadequate roads and traffic control.

The traffic conditions at the subject property and more particularly at the intersection of Spielman Road and Lappans Road were the most contested of the issues. Appellants presented testimony regarding the previously submitted traffic study which supported the proposed use. Appellant's engineer further testified that they collected new trip numbers and factored those into the proposed use which has a reduced intensity

from the original request in 2018. Almost all of the opposition witnesses raised traffic concerns for the proposed project. Specifically, there was concern for congestion at the intersection and concern for adequate sight distance along Spielman Road. There is no dispute that the proposed use will result in increased traffic, including truck traffic along Lappans Road and onto Spielman Road. But an increase in traffic does not necessarily equate to unsafe traffic conditions. This is particularly true when there are proposed improvements to address both existing and anticipated traffic conditions. Appellant proposes to improve the traffic lanes and the operation of the traffic signal so that there will be a dedicated left turn from Spielman Road and separate right turn from Lappans Road towards the subject property. In addition, Appellant's engineer testified that there are proposed grading cuts and fill locations to remove the sight distance barriers on Spielman Road. The Board finds that these concerns are more appropriately addressed during the site plan review process when specific elements of access design and sight distance will be covered in detail. Nevertheless, the anticipated traffic increase from the proposed use does not in and of itself, create a dangerous or unsafe condition that would warrant a denial of this special exception request. Appellant has a plan for addressing and mitigating those concerns which will be further scrutinized by the Planning Commission.

Appellant proposes to operate a truck refueling station in addition to an existing convenience store and gas station across the street from operations like Bowman Trucking and Rustoleum. These uses are similar in the impact they may have on surrounding properties and in this case that impact is limited, given that there are not many homes near the operations. The Board does not have evidence that the proposed use will disrupt the peaceful enjoyment of people in their homes.

Although there were several opposition witnesses who raised a concern for

property values, there was no actual evidence presented. Property values refer to market values which can be subjective in nature. Other than the property owned by Mr. and Mrs. Black, there are no residential properties in close proximity and certainly not close enough to materially affect property values. The Board was not presented with any evidence to suggest that the proposed project would have a negative effect on property values.

The proposed use is not likely to create any odors, dust, gas, smoke, fumes, vibrations, or glare beyond what is already generated in the immediate area. There is likely to be some increase in noise and light from operation and from traffic, but only to the closest neighboring properties. Moreover, Appellant provided testimony that adequate buffering and site enhancements could be utilized to minimize any such additional noise or light.

The Board finds that the proposed use is an appropriate use of land and/or structure. We have already noted its appropriateness in terms of the orderly growth of the community and believe that with site and road upgrades, the surrounding properties will enjoy the benefit of improvements to the area. The Board did hear opposition testimony regarding concerns for the geological makeup of the subject property as it relates to the Geological and Karst Features mapping of Washington County. There was concern for possible underground fissures or other issues that could affect development. The Board certainly recognizes that further studies and evaluation are needed to determine geological makeup and site design for the underground storage of petroleum products. While these are important elements to the development of the property, they are really site design elements that appropriately addressed during the site plan review process. Moreover, the concerns raised were speculative in nature and not necessarily unique to the subject property.

As we have mentioned, there were several previous decisions rendered regarding the use of the subject property. Most notable is the recent Circuit Court decision, resolving the issue of whether the proposed use was in fact a “truck stop”. Following those decisions, the Appellant has properly sought a special exception for a truck stop and we now consider that request in the context of the *Schultz v. Pritts*, 291 Md. 1, 15 (1981) analysis and its progeny, along with the required considerations of the Ordinance.

The proposed project with its improvements to the intersection of Spielman Road, Governor’s Lane Blvd and Lappans Road will promote the safety and general welfare of the public while also providing for the orderly growth of the community. The use will be similar in type to those in the immediate vicinity and will serve a need to those businesses and to passersby on nearby Interstate 81. The development and design of the subject property will be an improvement to the existing trailer parking. The Board finds that the proposed use is consistent with the purpose and vision of the Ordinance.

The closest school to the subject property is Fountain Rock Elementary, several miles away. The closest church is approximately one (1) mile east and the closest to the west is in the town of Williamsport. In terms of locations where public gatherings may occur, the most notable is probably the Williamsport Redmen Lodge #84 to the east on Lappans Road. There is no evidence to suggest that the proposed use will have an effect on gatherings at those locations other than an expected increase in the use of the interchange for Interstate 81.

Having considered the testimony and evidence presented and having further considered the criteria set forth in the Ordinance, 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, we conclude that

this appeal meets the criteria for a special exception, and Appellant's request should be granted.

Accordingly, the request for a special exception to establish a truck stop at the subject property is GRANTED, by a vote of 4-1. The application is granted upon the condition that the proposed use be consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: July 22, 2022

Notice of Appeal Rights

Any party aggrieved by a final order of the Authority in a contested case, whether such decision is affirmative or negative in form, is entitled to file a petition for judicial review of that order to the Circuit Court for Washington County within thirty (30) days of the date of the order.