

## BOARD OF APPEALS

June 22, 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.-**GRANTED**

**DOCKET NO. AP2022-021:** Mt. Aetna Advocacy Group has appealed the Planning Commission's determination of the proposed change to the Black Rock PUD as being constituted as a minor change on property owned by Black Rock Holding II LLC and located at Mt. Aetna Road, Hagerstown, Zoned Planned Unit Development. -**SCHEDULED FOR THE JULY 20, 2022 HEARING.**

**DOCKET NO. AP2022-022:** An appeal was made by Michael Decker for a variance from the required 15 ft. rear yard setback to 14.4 ft. for the constructed accessory building on property owned by the appellant and located at 20751 Millers Church Road, Hagerstown, Zoned Agricultural Rural.-**GRANTED**

**DOCKET NO. AP2022-023:** An appeal was made by Courtney Ridenour for a variance from the required 20 ft. rear yard setback to 12.4 ft. for constructed rear deck on property owned by the appellant and located at 20225 Kelly's Lane, Hagerstown, Zoned Residential, Multi-Family. -**GRANTED**

**DOCKET NO. AP2022-024:** An appeal was made by Paul & Anne Fitts for a variance from the required 15 ft. side yard setback to 10.5 ft. for the constructed foundation for a new single-family dwelling on property owned by the appellant and located at 12501 Covenant Way, Hagerstown, Zoned Agricultural Rural. -**GRANTED**

**DOCKET NO. AP2022-025:** An appeal was made by Steven Reed for a variance from the required 25 ft. setback from the road right-of-way to 20 ft. for a proposed freestanding sign on property owned by the appellant and located at 12314 Huyett Lane, Hagerstown, Zoned Business General.-**GRANTED**

**DOCKET NO. AP2022-026:** An appeal was made by Williamsport Storage Inc for a special exception to establish a professional office in an existing structure and variances from the lot area/setback requirements for the existing structure is special exception is approved: Lot area from 20,000 sq. ft. to 12,501 sq. ft., Front yard setback from 40 ft. to 33 ft., Left side yard setback from 25 ft. to 11 ft., Rear yard setback from 50 ft. to 22 ft. on property owned by the appellant and located at 468 & 472 South Artizan Street, Williamsport, Zoned Residential Transition.-**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 June 13, 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**

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**THE BOWMAN GROUP, LLC**  
**Appellant**

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**Appeal No.: AP2022-014**

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**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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> The decision was later upheld in an unreported opinion of the Court of Special Appeals.<sup>4</sup>

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

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<sup>1</sup> *Allen Swope*, Appeal No. AP2001-108.

<sup>2</sup> *Estate of Ned Amsley, et al.*, Appeal No. AP2017-031

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

<sup>4</sup> *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.

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

**MICHAEL DECKER**

**Appellant**

**Appeal No.: AP2022-022**

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**OPINION**

Michael Decker (hereinafter “Appellant”) requests a variance from the required 15-foot rear yard setback to 14 feet, 4 inches for the construction of an accessory building at the subject property. The subject property is located at 20751 Millers Church Road, Hagerstown, Maryland and is zoned Agricultural Rural. The Board held a public hearing in this matter 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 20751 Millers Church Road, Hagerstown, Maryland and is owned by Appellant. The subject property is zoned Agricultural Rural.
2. The subject property is bounded to the rear and surrounding areas by farmland, generally used for planting corn. There are no residences remotely close to Appellant’s property.
3. There are existing markers set by the neighboring farmer which have been used for many years to mark the property line.

4. Appellant took measurements off the existing posts to plan construction of an accessory building at the rear of his property. He measured in order to comply with setback requirements.

5. Appellant has since constructed the building, only to discover that the rear wall encroaches into the setback approximately eight (8) inches.

6. There was no opposition presented to this appeal.

### **Rationale**

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 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 variance 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. § 25.56(A).

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).)

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<sup>1</sup> “When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive (“or”), Maryland courts 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).

Appellant testified that he took measurements from the existing poles set by his neighbor and believed them to be accurate regarding the property line. It was only after he was required to obtain a location survey that he discovered his building was constructed in the setback area. Appellant further testified that it would cost him substantial amounts of money to move the rear wall eight (8) inches to achieve compliance. Imposing such strict compliance would deprive Appellant of the ability to maintain an accessory structure on his property, a use which others in the zoning district clearly enjoy. Moreover, it would be burdensome both practically and financially for Appellant to have tear down the wall and rebuild it. The eight (8) inch variance is clearly the minimum necessary for Appellant to comply and the Board finds it satisfies the criteria set forth in the Ordinance for a variance.

Accordingly, the request for a variance from the required 15-foot rear yard setback to 14 feet, 4 inches for the construction of an accessory building at the subject property is GRANTED, by a vote of 5-0. 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 18, 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.

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

**COURTNEY RIDENOUR**

**Appellant**

**Appeal No.: AP2022-023**

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**OPINION**

Courtney Ridenour (hereinafter "Appellant") requests a variance from the required 20-foot rear yard setback to 12 feet, 4 inches for the construction of a rear deck at the subject property. The subject property is located at 20225 Kelly's Lane, Hagerstown, Maryland and is zoned Residential, Multi-Family. The Board held a public hearing in this matter 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 20225 Kelly's Lane, Hagerstown, Maryland and is owned by Appellant. The subject property is zoned Residential, Multi-Family.
2. Appellant moved into her home approximately three (3) years ago. Her property consists of a townhouse unit, with a fenced rear yard and bounded in the rear by common area for the neighborhood.
3. Appellant and her father constructed an approximately 12 by 17-foot deck

to the rear of her home. Appellant was asked to get a location survey which revealed that the deck encroached into the rear setback.

4. The size of the deck is similar to what other houses in the neighborhood have. When viewed from the side, the deck is in line with other neighboring decks.

5. The house was constructed with doors that open to the rear area in anticipation of having a deck or patio area.

6. The deck is currently situated 12 feet, 4 inches from the rear property line.

7. There was no opposition presented to this appeal.

### **Rationale**

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 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 variance 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. § 25.56(A).

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

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<sup>1</sup> “When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive (“or”), Maryland courts 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).



(such as obstructions) or other similar restrictions.” *North v. St. Mary’s Cnty.*, 99 Md. App. 502, 514 (1994).)

Appellant seeks a variance from the rear setback line in order to maintain her newly constructed deck. Although the hardship of this situation may have been self-created, the practical difficulty is readily apparent. Appellant would have to tear down her deck and start over, and moreover, would be limited to approximately four (4) feet of deck space within the setback limits. This would not only be impractical, but arbitrarily unfair given that many of the other homes in the neighborhood have decks very similar in size and dimension. The request is clearly the minimum necessary for Appellant to comply and the Board finds it satisfies the criteria set forth in the Ordinance for a variance.

Accordingly, the request for a variance from the required 20-foot rear yard setback to 12 feet, 4 inches for the construction of a rear deck at the subject property is GRANTED, by a vote of 5-0. 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 18, 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.

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

**PAUL AND ANNE FITTS  
Appellant**

**Appeal No.: AP2022-024**

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**OPINION**

Paul and Anne Fitts (hereinafter “Appellants”) request a variance from the required 15-foot side yard setback to 10 feet, 5 inches for the construction of a garage at the subject property. The subject property is located at 12501 Covenant Way, Hagerstown, Maryland and is zoned Agricultural, Rural. The Board held a public hearing in this matter 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 12501 Covenant Way, Hagerstown, Maryland and is owned by Appellants. The subject property is zoned Agricultural, Rural.
2. The subject property consists of approximately three (3) acres in a pie-shaped lot on a cul-de-sac. It is bounded on either side by improved residential lots and to the rear by Antietam Creek.
3. Appellants are in the process of building a new, 6,000 square-foot home on the subject property.

4. In addition to the home, Appellants are building a 28 by 24-foot, two-car attached garage on the west side of the home. The contractor began construction and then halted when the setback encroachment was discovered.

5. There is a 10,000 square-foot septic reserve area on the east side of the home which restricts construction.

6. The immediate neighbors on both sides of Appellants have executed a letter in support of this project.

7. The southwest corner of the proposed garage is the only portion of the structure which encroaches into the setback.

8. The west side of the subject property is bounded by numerous trees which screen the neighboring property.

9. There was no opposition presented to this appeal.

### **Rationale**

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 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 variance 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. § 25.56(A).

Practical difficulty and undue hardship are the result of a property being unique.

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<sup>1</sup> “When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive (“or”), Maryland courts 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).

“‘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 seeks a variance in order to construct their two-car garage along with their new residence. The proposed garage is designed for two (2) cars and its dimensions are fairly standard for such construction. In order to accommodate this, the southwest corner of the garage encroaches into the setback area approximately 4 feet, 7 inches. The testimony was that footers had been poured and wall construction began when the issue was discovered. The garage does not yet have a slab and further construction was halted until the variance process was completed.

Appellants are building on a pie-shaped lot which narrows as it proceeds to the front property line, thus reducing the amount of buildable area from side to side. In this particular case, Appellants are also limited by the existence of the septic reserve area on the east side of the property. The location of the septic reserve area mandated that the garage be located on the west side of the home. Thus, the conditions of the property not only limit the location of the garage but create the practical difficulty in complying with the setback requirements. It appears that other properties in the immediate neighborhood have two-car garages, and this would not confer any special benefit on Appellants. Conversely, if they were to comply with the setback, they would have to reduce the size of the garage from the standard size for two (2) cars. Under the circumstances, the Board finds that Appellants have satisfied the criteria for a variance based on practical difficulty.

Accordingly, the request for a variance from the required 15-foot side yard setback

to 10 feet, 5 inches for the construction of a garage at the subject property is GRANTED, by a vote of 5-0. 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 18, 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.

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

STEVEN REED

**Appellant**

**Appeal No.: AP2022-025**

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**OPINION**

Steven Reed (hereinafter “Appellant”) requests a variance from the required 25-foot setback from the road right-of-way to 20 feet for a proposed freestanding sign at the subject property. The subject property is located at 12314 Huyett Lane, Hagerstown, Maryland and is zoned Business General. The Board held a public hearing in this matter 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 12314 Huyett Lane, Hagerstown, Maryland and is owned by Appellant. The subject property is zoned Business General.
2. The subject property consists of an old house and the King Oil business in the rear of the property.
3. Appellant is in the process of converting the existing house into office space for a business.
4. The State Highway Administration maintains a right-of-way that has

increased over the years and now spans a large portion of the front yard of the subject property. This includes widening to install a right turn lane for Maryland Route 63.

5. Appellant proposes to construct a sign thirteen (13) feet from the residence and twenty (20) feet from the road right-of-way.

6. State Highway Administration has indicated support for the proposed sign.

7. There was no opposition presented to this appeal.

### **Rationale**

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 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 variance 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. § 25.56(A).

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).)

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<sup>1</sup> “When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive (“or”), Maryland courts 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).

Appellant is seeking to construct a business sign on the subject property for passersby on busy Route 40. Under normal circumstances, compliance with a 25-foot setback would still allow for a visible sign announcing a business or other activity at a particular property. However, at the subject property, the sizable SHA right-of-way pushes any signage back to more than sixty (60) feet from the lanes of traffic. These conditions created a hardship and pose a practical difficulty in maintaining strict compliance. Without the variance relief, Appellant would be forced to locate the sign eight (8) feet from the existing residence. The purpose of the sign is to be visible from the roadway and locating it closer to the road and within the setback does so without any adverse impacts. Appellant's request is the minimum necessary and would not result in any special benefit not already enjoyed by other surrounding properties. The Board finds that Appellant has satisfied the variance criteria.

Accordingly, the request for a variance from the required 25-foot setback from the road right-of-way to 20 feet for a proposed freestanding sign at the subject property is GRANTED, by a vote of 5-0. 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 18, 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.



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

**WILLIAMSPORT STORAGE, INC.**

**Appellant**

**Appeal No.: AP2022-026**

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**OPINION**

Williamsport Storage, Inc. (hereinafter “Appellant”) requests a special exception to establish a professional office in an existing structure at the subject property. Appellant also requests variances to reduce the minimum lot area from 20,000 square feet to 12,501 square feet, the front yard setback from 40 feet to 33 feet, the left side yard setback from 25 feet to 11 feet and the rear yard setback from 50 feet to 22 feet at the subject property. The subject property is located at 468 and 472 South Artizan Street, Williamsport, Maryland and is zoned Residential Transition. The Board held a public hearing in this matter 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 468 and 472 South Artizan Street, Williamsport, Maryland and is owned by Appellant. The subject property is zoned Residential Transition.
2. The subject property consists of a small, 700-square foot home and a garage

and is situated at the end of a dead-end residential street. The subject property is directly across the street from the Williamsport Storage Bin facility.

3. For approximately thirty-six (36) years, Appellant has maintained is business offices on separate property approximately one hundred (100) feet away from the storage facility. The property was recently sold, and Appellant is unsure about the future use.

4. Appellant proposes to use the subject property for its business office.

5. Appellant's office is maintained by one (1) manager who works 9:00 a.m. to 5:00 p.m., Monday through Friday, and 9:00 a.m. to 12:00 p.m. on Saturday.

6. Most of Appellant's customers are set up for automatic payment or make payments and manage their accounts online. There is minimal daily foot traffic to the office.

7. The existing residence needs repair and Appellant plans to renovate the interior. There are no plans to change the footprint of the building.

8. There was no opposition presented to this appeal.

### **Rationale**

Appellant has requested both a special exception and variance relief related to its proposed use of the subject property. Because the variances are only necessary if the special exception is granted, the Board shall initially consider Appellant's special exception request.

### ***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 the instant case, Appellant is seeking the Board’s approval to convert a residence into a professional office related to its storage facility located across the street. The office would be located in the residential structure and be operated by one (1) manager during the week and for part of Saturday. There is no intention to add to the building itself, although some interior renovations will be done. Given the location of the subject property, it is unlikely that it will have any impact on the surrounding area. With limited customer traffic and only one (1) employee, the proposed use won’t appear any different than if someone were to live in the home. The proposed use will not produce any noise, odor, gas, dust, or light that would adversely impact neighboring properties. 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, secures public safety and welfare and upholds the spirit of the Ordinance.

### *Variance*

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 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

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<sup>1</sup> “When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive (“or”), Maryland courts 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).

the variance 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. § 25.56(A).

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).)

The need for variance relief in this case is the direct result of changing the use through the special exception approval. As the subject property will now be used as a professional office, the Ordinance requires greater setbacks because of the proximity to residential property. As has been stated, there is no plan for additional or new construction that would result in larger or new buildings. There is also no plan for reconfiguration of the subject property. Thus, the strict mandates of the setbacks are technical in nature, given there will be no outward change to the appearance of the subject property. To require compliance would be to elevate form over substance, especially when the actual use of the subject property will be no more intense than if it were used as a residence. The Board is satisfied that the variance criteria has been met and that Appellant will suffer practical difficulty without a relaxation of the setback and dimensional requirements.

Accordingly, the request for a special exception to establish a professional office in an existing structure at the subject property is GRANTED, by a vote of 4-1. The requests for variances to reduce the front yard setback from 40 feet to 33 feet and to reduce the rear yard setback from 50 feet to 22 feet at the subject property are GRANTED, by a

vote of 5-0. The requests for variances to reduce the minimum lot area from 20,000 square feet to 12,501 square feet and to reduce the left side yard setback from 25 feet to 11 feet at the subject property are 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.

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