

BOARD OF APPEALS

July 5, 2023

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

AGENDA

AP2023-029: Circuit Court remanded to the Board of Appeals for further proceedings and a rehearing for AP2022-034 for the special exception to establish a general retail/merchandise store. The property is owned by George & Freada King, Parcel 14006443, the vacant lot beside 14413 McAfee Hill Road. **-POSTPONED TO THE AUGUST 2, 2023 HEARING.**

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 26, 2023. 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.

Jay Miller, Chairman
Board of Zoning Appeals



WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P: 240.313.2430 | F: 240.313.2431 | Hearing Impaired: 7-1-1

ZONING APPEAL

Property Owner:	George & Freada King 14413 Mcafee Hill Road Cascade MD 21719	Docket No:	AP2023-029
Appellant:	Outdoor Contractors Inc 14703 Indian Springs Road Hancock MD 21750	Tax ID No:	14006443
		Zoning:	RV
		RB Overlay:	No
		Zoning Overlay:	
		Filed Date:	06/15/2023
		Hearing Date:	07/05/2023

Property Location: Vacant Lot Beside 14413 Mcafee Hill Road
Cascade, MD 21719

Description Of Appeal: Circuit Court remanded to the Board of Appeals for further proceedings and a rehearing for AP2022-034 for the special exception to establish a general retail/merchandise store.

Appellant's Legal Interest In Above Property:	Owner: No	Contract to Rent/Lease: No
	Lessee: No	Contract to Purchase: Yes
	Other:	

Previous Petition/Appeal Docket No(s): AP2022-034

Applicable Ordinance Sections: Washington County Zoning Ordinance Section: 3.3(1) P

Reason For Hardship:

If Appeal of Ruling, Date Of Ruling:

Ruling Official/Agency:

Existing Use: Vacant Lot **Proposed Use:** Retail Store

Previous Use Ceased For At Least 6 Months: **Date Ceased:**

Area Devoted To Non-Conforming Use -
Existing:
Proposed:

I hereby affirm that all of the statements and information contained in or filed with this appeal are true and correct.

Appellant Signature

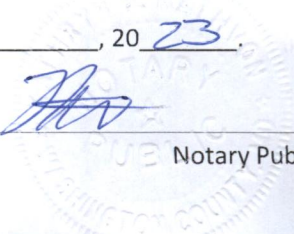
State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 15 day of June, 2023.

Kathryn B Rathvon
 NOTARY PUBLIC
 WASHINGTON COUNTY
 MARYLAND
 MY COMMISSION EXPIRES NOVEMBER 07, 2025

My Commission Expires

Notary Public





WASHINGTON COUNTY BOARD OF ZONING APPEALS

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AFFIDAVIT IN COMPLIANCE WITH SECTION 25.51(C)

Docket No: AP2023-029

State of Maryland Washington County, To Wit:

On 6/15/2023, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared Outdoor Contractors Inc and made oath in due form of law as follows:

Outdoor Contractors Inc will post the zoning notice sign(s) given to me by the Zoning Administrator in accordance with Section 25.51(c) of the Washington County Zoning Ordinance for the above captioned Board of Appeals case, scheduled for public hearing on 07/05/2023, and that said sign(s) will be erected on the subject property in accordance with the required distances and positioning as set out in the attached posting instructions.

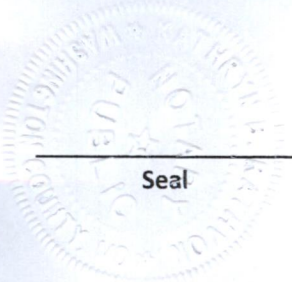
Sign(s) will be posted on 06/20/2023 and will remain until after the above hearing date.

Outdoor Contractors Inc

Sworn and subscribed before me the day and year first above written.

Kathryn B Rathvon
NOTARY PUBLIC
WASHINGTON COUNTY
MARYLAND
MY COMMISSION EXPIRES NOVEMBER 07, 2025

Notary Public



Seal

My Commission Expires

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

<p>IN THE MATTER OF ALLSION SEVERANCE, ET AL., PETITIONERS FOR JUDICIAL REVIEW OF THE DECISION OF THE BOARD OF APPEALS FOR WASHINGTON COUNTY IN THE CASE OF: AP2022-034</p>	<p>Case No.C-21-CV-22-000463</p>
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ORDER OF REMAND

This matter having come before the court on May 19, 2023, for an administrative appeal of the decision by the Board of Appeals for Washington County in Case No. AP-2022-034, all pleadings and arguments having been considered, on this 22nd day of March, 2023, by the Circuit Court for Washington County, Maryland, for the reasons stated on the record;

It is **FOUND** that the specific "Finding of Fact" on pages 1 through 3 of the November 23, 2022 Amended Opinion are supported by facts in the record;

It is further **FOUND** that Washington County Zoning Ordinance Section 5D.2 "Special Exceptions" governs the ultimate question before the Board of Appeals' in the instant decision, to wit:

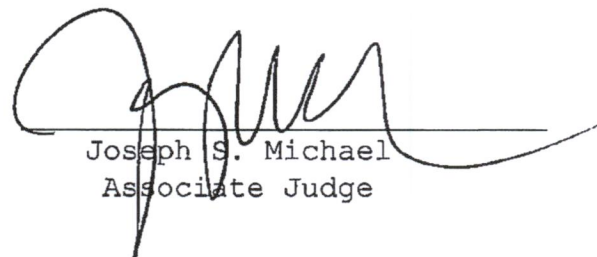
Section 5D.2 Special Exceptions

See the Table of Land Uses [Table No. 3.3(a)] and any other use the Board of Appeals finds is functionally similar to any permitted use or special exception listed in the Article. The Board of Appeals shall not grant any special exception that is inconsistent with the purpose set forth for this district.

It is further **FOUND** that the Board of Appeals' amended order dated November 23, 2022 contains no finding or reference whatsoever to which, if any, "permitted use or special exception" from the "Table of Land Uses [Table No. 3.3(a)]" the Board of Appeals found the applicant's use to be "functionally similar".

It is further **FOUND** that Section 5D.2 anticipates that an applicant's proposed use must be functionally similar to a single "permitted use or special exception [use]". Therefore, it is incumbent upon the applicant to designate which particularized "permitted use or special exception" the applicant intends its proposed use to be "functionally similar" in advance of any hearing. In this way, the Board of Appeals' can proceed in an orderly and logical fashion, and the Board of Appeals can make specific findings of fact on exactly how the proposed use is, or is not, functionally similar to the permitted use or special exception use designated by the Applicant.

It is **ORDERED**, that this matter is remanded to the Board of Appeals for Washington County for further proceedings and a rehearing consistent with this order.



Joseph S. Michael
Associate Judge

cc: Michele Rosenfeld, Esq.
James Stone, Esq.
Kirk Downey, Esq.
The Board of Appeals for Washington County

KANE & STONE, P.A.
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TELEPHONE (240) 513-4680
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July 5, 2023

Washington County Board of Zoning Appeals
747 Northern Avenue
Hagerstown, Maryland 21742

**Re: 14413 MacAfee Road, Cascade, MD - Special Exception Request
Case No. AP2022-034**

Dear Board Members:

We represent Outdoor Contractors, Inc. (the “Applicant”) in connection with this matter.

Procedural Background.

On July 13, 2022, the Applicant applied for a special exception to establish a general retail/merchandise store on the subject Property, specifically a Dollar General Market. The Application was based on the premise that the proposed use was functionally similar to an amalgam of uses that are either principal permitted or special exception uses in the Rural Village (“RV”) District. After a hearing, the Board decided to grant the special exception. The Board issued an Opinion dated September 30, 2022 and an Amended Opinion dated November 23, 2022 granting the special exception.

Allison Severance and others (the “Opponents”) appealed the Board’s decision to the Circuit Court for Washington County, Maryland. After the hearing, by Order of Remand dated May 23, 2023, the Court vacated and remanded the case to the Board for further proceedings consistent with its Order. Significantly, the Court found that the findings of fact on pages 1 through 3 of Board’s Amended Opinion were supported by facts in the record. The Court further found, however, that the Amended Opinion made no finding as to which permitted or special use the Applicant’s proposed use was functionally similar. The Court further found that the Washington County Zoning Ordinance (the “Ordinance”) required the Applicant to designate a single principal permitted or special exception use for its functionally similar premise. This, in turn, requires the Applicant to somewhat narrow the grounds upon which its Application is based.

Amendment to Application.

Pursuant to the Court's May 23, 2023 Order, the Applicant amends its Application to state that its proposed use of the Property is functionally similar to a grocery store, which is an enumerated special exception in the RV District.

Meaning of the Term "Grocery Store".

The Ordinance lists grocery stores as one of the enumerated special exception in the RV District (Ordinance, § 3.3, Table 3.3(1)), but does not define the term itself. Therefore, this term should be given its common and ordinary meaning. The following common usage definitions are instructive:

- a store that sells food and household supplies; supermarket (Merriam Webster Dictionary)
- a store that sells food and small things that are often needed in the home (Cambridge Dictionary)
- a store that sells food and household supplies; supermarket (Britannica Dictionary)

All of these definitions contemplate that the term "grocery store" entails the sale of goods other than just food products, and none of these definitions are size-specific.

Functional Similarity to a Grocery Store.

There is already substantial evidence in the record to support the Applicant's contention that its proposed use of the Property is functionally similar to a grocery store. The evidence from the August 31, 2023 hearing demonstrates that the Applicant proposes to develop the Property as a Dollar General Market, a specialty type of Dollar General Store that emphasizes grocery and other market items. About one-third of the store's sales area will be devoted to fresh produce, vegetables, dairy and food products, candy and other grocery items (See Exhibit A - depiction of a typical Dollar General Market interior).

The store also will offer household supplies, some clothing, hardware, non-prescription healthcare products, pet food and supplies, personal care goods, and garden supplies. For the most part, these are the kinds of product categories that one would typically find in any grocery store.

For these reasons, the Applicant respectively contends that the proposed Dollar General Market is functionally similar to a grocery store. The Applicant therefore respectfully requests that

Board of Zoning Appeals
July 5, 2023

Page 3 of 3

this Board adopt the Applicant's proposed supplemental findings of fact (see Exhibit B) and grant the requested special exception on that basis.

Respectfully Submitted,

KANE & STONE, P.A.

A handwritten signature in blue ink, appearing to read "James W. Stone", is written over a horizontal line.

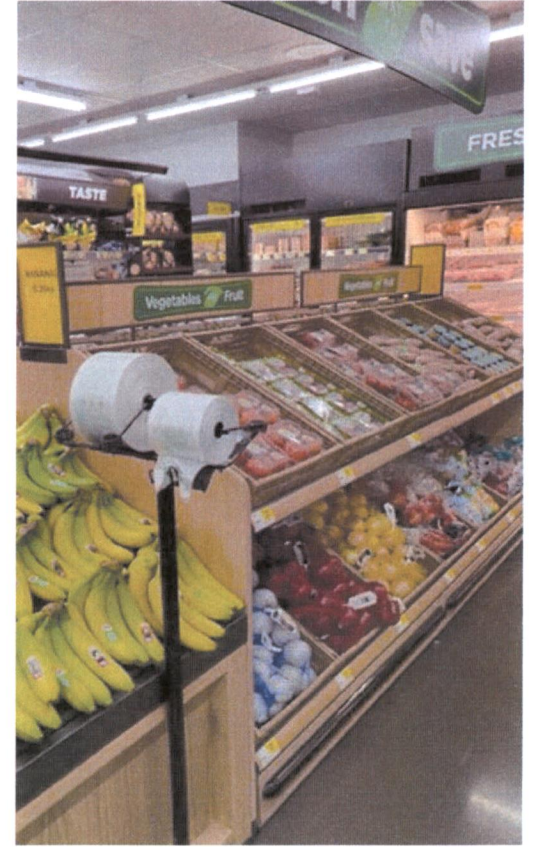
James W. Stone

Attorneys for Outdoor Contractors, Inc.

cc: Michele Rosenfeld
Kirk Downey



Exhibit A





DG market

PROPOSED SUPPLEMENTAL FINDINGS OF FACT

15. A grocery store, within the meaning of the Zoning Ordinance, is a store that sells food and household supplies.
16. The proposed Dollar General Market to be established on the subject Property would include the sale of fresh produce, vegetables, dairy and food products, candy and other grocery items, household supplies, some clothing, hardware, non-prescription healthcare products, pet food and supplies, personal care goods, and garden supplies.
17. For the most part, these product categories are found in a typical grocery store.
18. The Board therefore finds that the proposed Dollar General Market to be established at the subject Property is functionally similar to a grocery store.

Rathvon, Kathryn B.

From: James W. Stone <JStone@kane-stone.com>
Sent: Tuesday, July 4, 2023 3:39 PM
To: Rathvon, Kathryn B.
Cc: Michele Rosenfeld; Downey, Kirk
Subject: Case No. AP2022-034 - Special Exception Request
Attachments: 2023-07-05 Applicant's Hearing Submission (signed).pdf

[You don't often get email from jstone@kane-stone.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

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Any claims of being a County official or employee should be disregarded.

Kathryn Rathvon
Washington County Zoning Department

Dear Ms. Rathvon:

We represent Outdoor Contractors Inc. in connection with the above-captioned appeal. Attached is the Applicant (Appellant) submission for the July 5, 2023 hearing.

Sincerely,

James W. Stone
KANE & STONE, P.A.
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3rd Floor
Hagerstown, Maryland 21740
(240) 513-4680
(240) 513-4681 (fax)
JStone@kane-stone.com

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