

BOARD OF APPEALS

July 6, 2022

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

AGENDA

DOCKET NO. AP2022-027: An appeal was made by Keir Lynn & Christopher Jordan for a special exception to establish a guest house in a future accessory building on property owned by appellant and located at 9616 Blooming Meadows Court, Hagerstown, Zoned Agricultural Rural.-**WITHDRAWN**

DOCKET NO. AP2022-028: An appeal was made by Elvin Eby for a special exception to establish a machine shop facility to make and repair items for agricultural equipment on provided owned by Glenn & Brenda Eby and located at the property adject to 14603 Fairview Road, Clear Spring, Zoned Agricultural Rural and Rural Village.- **GRANTED WITH CONDITIONS**

DOCKET NO. AP2022-029: An appeal was made by Obidi Holdings LLC for a special exception to establish a full-service physicians' office in existing commercial building on property owned by FHCPM LLC and located at 13316 Marsh Pike, Hagerstown, Zoned Residential Suburban.- **GRANTED WITH CONDITIONS**

DOCKET NO. AP2022-030: An appeal was made by William Bryd for a variance from the required 15 ft. side yard setback to 5 ft. for proposed detached garage on property owned by the appellant and located at 17323 Spielman Road, Fairplay, Zoned Agricultural Rural.- **GRANTED**

DOCKET NO. AP2022-031: An appeal was made by David & Heather Heitzer for a variance from 50 ft. rear setback to 9 ft. for construction of a rear deck/three season room on property owned by the appellants and located at 9402 Musket Court, Hagerstown, Zoned Agricultural Rural.- **GRANED**

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 27, 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.

Jay Miller, Chairman
Board of Zoning Appeals

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

ELVIN EBY

Appellant

* **Appeal No.: AP2022-028**

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OPINION

Elvin Eby (hereinafter “Appellant”) requests a special exception to establish a machine shop facility to make and repair items for agricultural equipment at the subject property. The subject property is located at 0 Fairview Road beside 14603 Fairview Road, Clear Spring, Maryland and is zoned Rural Village and Agricultural, Rural. The Board held a public hearing in this matter on July 6, 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 0 Fairview Road beside 14603 Fairview Road, Clear Spring, Maryland and is owned by Glenn and Brenda Eby. The subject property is zoned Rural Village and Agricultural, Rural.
2. Glenn and Brenda Eby have given their authorization for Appellant to make this special exception request for the subject property.
3. Appellant proposes to construct a 12,000 square foot machine shop at the subject property to repair shafts and other parts for agricultural equipment. The

remainder of the property would be used for raising cattle.

4. The volume of traffic to the subject property would consist of some deliveries and transport of equipment and would be comparable to a dairy farm operation.

5. The proposed machine shop will be open Monday through Friday, from 7:30 a.m. to 5:00 p.m. There will be no weekend hours.

6. There will be approximately six (6) to eight (8) employees at the machine shop. The shop will be for working on items that are shipped or go out for delivery and there is no expectation of customer traffic.

7. Appellant plans to install dusk to dawn lighting that will be downward facing and will not be directed to neighboring properties.

8. Appellant plans to install roll-up doors for the machine shop, which will face towards Route 494 and not towards adjacent residences.

Rationale

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 an idle dairy farm into a machine shop facility for repairing farm equipment. Appellant already operates such a shop in Maugansville, and this proposed project would be an expansion of the business. Appellant testified that there would be no customer traffic and items repaired would either go out for delivery or be shipped, thus limiting the total traffic to the subject property. Appellant’s plan to use the remainder of the property for raising

cattle maintains its agricultural nature and helps the proposed machine shop blend into the surrounding neighborhood. The proposed use will not produce any odor, gas, dust, or light that would adversely impact neighboring properties. The Board did hear testimony that the noise of light metal clanking is to be expected given the work that will be performed, however this noise is no more than would be produced if there were an active dairy farm operating at the property. 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. In light of the concerns raised at the hearing, the Board suggests that buffering and the use of downward lighting be considered.

Accordingly, the request for a special exception to establish a machine shop facility to make and repair items for agricultural equipment 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, that Appellant utilize appropriate buffering and screening for surrounding properties, and that downward facing lighting be required, subject to site plan design requirements.

BOARD OF APPEALS

By: Jay Miller, Chair

Date Issued: August 4, 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**

OBIDI HOLDINGS, LLC
Appellant

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Appeal No.: AP2022-029

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OPINION

Obidi Holdings, LLC (hereinafter “Appellant”) requests a special exception to establish a full-service physicians’ office in a commercial building at the subject property. The subject property is located at 13316 Marsh Pike, Hagerstown, Maryland and is zoned Residential Suburban. The Board held a public hearing in this matter on July 6, 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 13316 Marsh Pike, Hagerstown, Maryland and is owned by FHCPM, LLC. The subject property is zoned Residential Suburban.
2. FHCPM, LLC has given its authorization for Appellant to make this special exception request for the subject property. Appellant is the contract purchaser of the subject property.
3. Appellant currently operates a family medical practice on Memorial Boulevard in Hagerstown, Maryland. The proposed office would be a second location for the practice.

4. The proposed medical practice would be open Monday through Friday from 8:00 a.m. to 5:00 p.m. and 9:00 a.m. to 1:00 p.m. on Saturday.

5. Appellant plans to have between three (3) and six (6) providers plus staff at the proposed second office. In the beginning there may be between four (4) and six (6) total people working at the practice.

6. The proposed medical practice is by appointment only and at any given time, it is expected there would be a maximum of nine (9) to ten (10) cars in the parking lot. Appellant expects a maximum of eight (8) to nine (9) patients in any given hour.

7. Aside from asbestos remediation, there are no major changes planned for the building at the subject property. Appellant intends to maintain the residence on the second floor of the building.

8. The subject property currently has ten (10) parking spaces and Appellant will have to create more to accommodate the proposed medical practice.

9. There was no opposition presented to this appeal.

Rationale

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.

Appellant is seeking the Board’s approval to establish a second office for its family medical practice in a commercial building at the subject property. Appellant testified that they would need additional parking as part of the site plan review process, but that there are no other material changes proposed for the existing building. Any additional parking requirements would be handled at the site plan review stage, and if necessary, would

have to come before this Board in another appeal. The medical practice will serve as a second location and plans to be operate fully during normal business hours each week. The proposed use will not produce any noise, odor, gas, dust, or light that would adversely impact neighboring properties. Other than the coming and going of patient traffic, there will be no outward impact of the medical practice's operation. The use certainly serves the community and fits into the surrounding neighborhood. 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.

Accordingly, the request for a special exception to establish a machine shop facility to make and repair items for agricultural equipment 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, and that Appellant utilize downward facing lighting subject to site plan design requirements.

BOARD OF APPEALS

By: Jay Miller, Chair

Date Issued: August 4, 2022

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

WILLIAM BYRD

Appellant

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Appeal No.: AP2022-030

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OPINION

William Byrd (hereinafter “Appellant”) requests a variance from the required 15-foot side yard setback to five (5) feet for a proposed detached garage at the subject property. The subject property is located at 17323 Spielman Road, Fairplay, Maryland and is zoned Agricultural, Rural. The Board held a public hearing in this matter on July 6, 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 17323 Spielman Road, Fairplay, Maryland and is owned by Appellant. The subject property is zoned Agricultural, Rural.
2. The subject property consists of a residence with sloping terrain and a rock vein running through the ground.
3. Appellant’s neighbor, Michael Adie, has agreed to sell and small portion of his adjoining property to give Appellant the necessary space for the garage.
4. Appellant’s neighbors on each side of the subject property have signed

letters in support of the proposed project.

5. Appellant's septic tank is also located in close proximity to the area where the garage will be constructed.

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 25.56.¹ "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).

Appellant testified that he wants to construct a detached garage on his property. Due to the topography and the existence of a rock vein, the only reasonably flat area

¹ "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).

where he can avoid the rock is the location he has identified. The current location of his septic area further limits the buildable and usable area of the subject property. Appellant also testified that in order to build the garage, he would need a small portion of land from his neighbor who has agreed to sell to assist this project. The Board finds that the unique conditions of the subject property create practical difficulty in locating the proposed garage on another part of the property. The relief requested is the minimum necessary to serve the proposed garage construction and is not opposed by any of Appellant's immediate neighbors. The Board finds that that Appellant has satisfied the variance criteria.

Accordingly, the request for a variance from the required 15-foot side yard setback to five (5) feet for a proposed detached 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: Jay Miller, Chair

Date Issued: August 4, 2022

Notice of Appeal Rights

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

DAVID AND HEATHER HEITZER
Appellant

Appeal No.: AP2022-031

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OPINION

David and Heather Heitzer (hereinafter “Appellants”) requests a variance from the required 50-foot rear yard setback to nine (9) feet for construction of a rear deck and three season room at the subject property. The subject property is located at 9402 Musket Court, Hagerstown, Maryland and is zoned Agricultural, Rural. The Board held a public hearing in this matter on July 6, 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 9402 Musket Court, Hagerstown Maryland and is owned by Appellants. The subject property is zoned Agricultural, Rural.
2. The subject property consists of a two-story residence and rear deck with a large rock ledge and limestone rock outcropping.
3. The subject property is triangular in shape, narrowing toward the front along Musket Court. There is also a septic area located in the front half of the property.
4. The subject property was the subject of a variance request in January 1996,

related to the construction of the residence on the property. A variance was granted to reduce the 50-foot rear yard setback to 15 feet to construct the residence in case AP96-001.

5. The right side of the home can be seen from the street and is also the location for the basement access.

6. Appellants wish to construct a small deck and construct a three (3) season room where the existing deck is located. The deck portion would be approximately 4 feet by 14 feet, 6 inches and the room would be 16 feet by 14 feet, 6 inches.

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

Appellants testified that when they purchased the property, they believed they had more room to the rear of the residence. Part of the appeal of this particular home was the ability to have sit outside and entertain on the deck during quiet evenings. Appellants were unaware of the code issues or the setback limitations that otherwise restrict the property from improvements. The topography of the subject property dictated the house to be constructed much further back than normal, thus shrinking the rear yard area. The Board finds that these conditions in addition to the location of the basement exit and the need for privacy all establish practical difficulty, making compliance with setback requirements impossible. 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 50-foot rear yard setback to nine (9) feet for construction of a rear deck and three season room 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: Jay Miller, Chair

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