

BOARD OF APPEALS

August 31, 2022

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

AGENDA

DOCKET NO. AP2022-034: An appeal was made by Outdoor Contractors Inc. for a special exception to establish a general retail/merchandise store on property owned by George & Freada King and located on the vacant lot next to 14413 McAfee Hill Road, Cascade, Zoned Rural Village.-**PREVIOUSLY POSTPONED FROM THE AUGUST 3, 2022 HEARING.-GRANTED WITH CONDITIONS**

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 August 22, 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**

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OUTDOOR CONTRACTORS, INC. * **Appeal No.: AP2022-034**

Appellant *

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OPINION

Outdoor Contractors, Inc. (hereinafter “Appellant”) requests a special exception to establish a general retail/merchandise store at the subject property. The subject property is known as the vacant lot beside 14413 McAfee Hill Road, Cascade, Maryland and identified as the parcel bearing Tax ID No. 14006443, and is zoned Rural Village. The Board held a public hearing in this matter on August 31, 2022. Appellant was represented by counsel, Zachary Kieffer, Esq. and the opposition, namely, Allison Severance, Danielle and Dylan Durning, and Roy and Dollie Sanders were represented by Michele McDaniel Rosenfield, Esq.

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 known as vacant lot beside 14413 McAfee Hill Road, Cascade, Maryland, and identified as the parcel bearing Tax ID No. 14006443 on the Tax Maps of Washington County. The subject property is zoned Rural Village.

2. The subject property consists of approximate 3.02 acres of unimproved property located directly across from Fort Ritchie and the American Legion Post 239.

3. Applicant is the contract purchaser and proposed developer of the subject property and makes this request with authority of the owners.

4. Applicant intends to subdivide the property creating a 2.18-acre parcel on which it will construct a Dollar General.

5. The proposed Dollar General will be approximately 12,480 square feet, with one-third of the interior retail space dedicated to fresh produce and market items. The store will operate seven (7) days per week, opening at 8:00 a.m. and closing at either 9:00 or 10:00 p.m.

6. The proposed Dollar General will receive periodic tractor trailer deliveries with loading and unloading to occur along the side of the building. It will be necessary for trucks to pull into the parking lot and back into the loading area.

7. Applicant modified its concept plan to move the access point along McAfee Hill Road so they could meet the required sight distance of 335 feet looking to the southwest. The sight distance looking to the northeast is 565 feet.

8. The immediate surrounding area consists of Fort Ritchie, American Legion Post 239, Sanders Market which serves as a neighborhood grocery store, the Handi Mart providing gas and convenience shopping, and the Chocolate Tavern.

9. There are three (3) other Dollar General stores within a five-mile radius of the subject property. The closest store is approximately 1.7 miles away.

10. Pursuant to State Highway Administration records, the intersection of McAfee Hill Road and Cascade Road operates a low level "A" and as a result, no additional traffic studies were necessary for the proposed project.

11. The proposed building will be situated with a setback of 68 feet at the

northwest corner and 99 feet at the northeast corner to the rear. Applicant also plans to plant a row of trees as additional screening and buffer for the neighboring properties.

12. Applicant and Dollar General have the ability to limit lighting after hours, including turning the signage and building lights off. Applicant also maintains the ability to further limit use of the lighting in the lease with Dollar General.

13. The proposed Dollar General will result in approximately 38 new traffic trips during morning peak hours and 55 new traffic trips during evening peak hours.

14. It is estimated that residential property immediately adjacent to a Dollar General would lose between 5% and 10% of its market value because of the Dollar General's operation.

Rationale

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

There are three (3) residential properties directly adjacent to the subject property, for which there would be some impact from the proposed retail use. Beyond that there are few homes and even fewer workplaces near the subject property. The number of people who live and/or work in the area is relatively low compared to other locations in the zoning district.

In terms of the orderly growth of the community, the subject property is currently zoned Rural Village and is situated at the corner of an intersection. It is located conveniently for nearby residents and for traffic passing through the area. Appellants have redesigned the concept to accommodate traffic conditions, to include adequate

buffering and to ensure the least amount of impact on surrounding properties. The proposed store will offer goods and services that are vital to small towns and rural living. The Board finds that the proposed use is consistent with the orderly growth of the community.

The opposition came to the hearing prepared to raise the inadequate sight distance and concerns for traffic conditions that would be created by the proposed use. However, Appellant's witnesses acknowledged that the original concept design needed to be revised and presented the Board with a revised entrance and sight distance measurements. The revisions resulted in sight distances that complied with both state and county requirements. Appellant's traffic engineer testified that the intersection of McAfee Hill Road and Cascade Road currently operates a low-level A and therefore would remain at an acceptable rating even after the project was completed. He also testified that the State Highway Administration was not requesting further traffic studies at this time, based on the current level of operation and the proposed use. Given the nature of the zoning district, there is likely to be an impact from increased customer traffic and some impact from delivery trucks, no matter where such a retail use were located. Appellant has addressed those issues and remains receptive to further design solutions during the site plan review process.

Appellant proposes to operate a Dollar General Store for the sale of groceries, retail and convenience items. There is no doubt that there will be some impact on the adjacent properties, given their proximity to the use. However, in terms of the surrounding area, there are few homes close enough to be directly impacted by the proposed use. Appellants indicated their hours of operation and demonstrated a willingness to turn off lighting at the property when the store was not in operation. Appellant has re-designed the entrance and traffic flow within the property to better accommodate deliveries and

customer traffic. When compared to the list of uses that would be principally permitted at the subject property, the impact of the proposed store is similar but not any greater. The Board finds that except for the adjacent property owners, there is no evidence that the proposed use will disrupt the peaceful enjoyment of people in their homes in the surrounding area.

There were several opposition witnesses who raised a concern for property values and the opposition presented testimony from a Certified Residential Appraiser. Mr. Bentson testified that it was his opinion it would be reasonable to expect a five percent (5%) to ten percent (10%) loss of value when compared to similar properties that were not affected by the proposed project. He testified further that the proposed Dollar General Store would have the same negative impact on property values as a 7-11 Convenience Store or a liquor store. Mr. Bentson also acknowledged that the impact to value would be similar regardless of the location in the zoning district. It is this last part that is particularly important to the Board's analysis. It is not surprising that a commercial use such as the one proposed would have some impact on adjacent residential property values. However, the real question is whether the impact is unique to this location, and therefore greater, as compared to other locations in the zoning district. The Board finds that impact is no greater at the subject property than it would be at another location within the district.

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. Appellant was also willing to accept limitations on the use of

lighting after hours at the subject property.

The Board finds that the proposed use is an appropriate use of land and/or structure. The Board recognizes there may be other more appropriate uses for the property, but the proposed use is permitted by special exception. There is an inherent appropriateness to such use as deemed by the Board of County Commissioners, subject to review of the criteria to evaluate the impact on surrounding properties.

Notwithstanding the analysis pursuant to *Schultz v. Pritts* and the related appellate opinions, there are no judicial decisions directly affecting the subject property. During the hearing, reference was made to the Board's decision in another case, finding that a proposed Dollar General Store is functionally and substantially similar to the other special exception uses in the Rural Village zoning district.

The proposed project is consistent with the orderly growth of the community. There is no evidence that it will create dangerous traffic or other safety concerns within the surrounding area. The proposed use has adequate buffering and screening to shield adjacent property owners and does not require any variances for setback requirements. Thus, the proposed project can be completed and still maintain the other requirements of the Ordinance. The Board finds that the proposed use is consistent with the purpose and vision of the Ordinance.

There are no schools or churches in close proximity to the subject property. There is no evidence to suggest that the proposed use will have an effect on gatherings at any such locations in the surrounding area.

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 following conditions:

1. That the proposed use be consistent with the testimony and evidence presented herein;
2. That the design of the building incorporate downward facing lighting;
3. That arborvitae have a minimum height of six (6) feet; and
4. That signage be limited to the building façade.

BOARD OF APPEALS

By: Jay Miller, Chair

Date Issued: September 30, 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.