

BOARD OF APPEALS

September 14, 2022

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

AGENDA

DOCKET NO. AP2022-037: An appeal was made by Hopewell Road LLC for a variance from the required minimum number of employee/customer parking spaces based on the square footage of the warehouse/office area from the required 453 spaces to 316 spaces on property owned by the appellant and located at 11159 Hopewell Road, Hagerstown, Zoned Highway Interchange. - **GRANTED**

DOCKET NO. AP2022-038: An appeal was made by Steven Reed for a variance from the required 25 ft. setback from the street right-of-way to 15 ft. for proposed freestanding sign on property owned by the appellant and located at 12314 Huyett Lane, Hagerstown, Zoned Business General. - **GRANTED**

DOCKET NO. AP2022-039: An appeal was made by NP National Pike Logistics I LLC for a variance from the setback requirement for a front yard adjacent to an expressway/primary highway shall be 150 ft. to 145 ft. for proposed warehouse on property owned by the appellant and located at 16822 National Pike, Hagerstown, Zoned Planned Industrial. - **GRANTED**

DOCKET NO. AP2022-040: An appeal was made by BK Suns Inc. for a variance from the required 25 ft. front yard setback for the proposed overhead canopy to 1.15 ft. for the Leitersburg Pike property line on property owned by the appellant and located at 19348 Leitersburg Pike, Hagerstown, Zoned Business Local. - **GRANTED**

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 September 5, 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**

HOPEWELL ROAD, LLC
Appellant

*

*

Appeal No.: AP2022-037

*

*

* * * * *

OPINION

Hopewell Road, LLC (hereinafter “Appellant”) requests a variance from the required 453 employee/customer parking spaces to reduce it to 316 parking spaces at the subject property. The subject property is located at 11159 Hopewell Road, Hagerstown, Maryland and is zoned Highway Interchange. The Board held a public hearing in this matter on September 14, 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 11159 Hopewell Road, Hagerstown, Maryland and is owned by Appellant. The subject property is zoned Highway Interchange.
2. The subject property consists of approximately 60.62 acres and has an irregular shape, running to a point at the southwest corner of the property and also containing a jagged outcropping of the western boundary line.
3. Appellant plans to construct a large warehouse distribution center which

will total approximately 459,877 square feet, with an interior office space of approximately 51,000 square feet.

4. Appellant's proposed concept plan includes 316 parking spaces for employees/customers.

5. Appellant expects to have two (2) working shifts that will overlap slightly during the shift transition period. Each shift will have approximately 142 employees working on the floor and no more than 16 people working in the office area.

6. Appellant does not anticipate customer traffic to the subject property. The office space will serve the distribution operation and will not be open to the public.

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,

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).

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).)

In the instant case, Appellant’s proposed warehouse would require 453 parking spaces based on the formula set forth in Section 21.12(b) of the Ordinance. Appellant only has a need for 316 parking spaces, meaning that compliance with the Ordinance requirements would result in additional 137 parking spaces that are unnecessary. This means more impervious surface area, less green space and overall impact on the property because of the need for additional developed land area. This is vital given the rocky terrain and the irregular shape of the subject property. The variance request not only seeks to reduce the total area to be developed, but it is consistent with maintaining as much of the natural characteristics of the subject property as possible while also being the minimum necessary to effectuate the project. Based on the foregoing, the Board finds that requiring strict compliance with the Ordinance would prevent Appellant from making reasonable use of the property, that the difficulties are peculiar to the subject property, and are not the result of Appellant’s own actions.

Accordingly, the request for a variance from the required 25-foot setback from the street right-of-way to 0 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.

Date Issued: October 3, 2022

BOARD OF APPEALS

By: Jay Miller, Chair

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.: AP2022-038

*

*

* * * * *

OPINION

Steven Reed (hereinafter "Appellant") requests a variance from the required 25-foot setback from the road right-of-way to 15 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 September 14, 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. Appellant was before this Board on June 22, 2022, to request a variance to 20 feet for the proposed sign. The Board granted the variance relief, although it was later discovered that the request had been made in error.

7. State Highway Administration has indicated support for the proposed sign and this modified variance request.

8. 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,

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).

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 subject property is unique because 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. Moreover, the modified request for five (5) additional feet does not change the Board’s previous analysis of the criteria. Based on the foregoing, the Board finds that requiring strict compliance with the Ordinance would prevent Appellant from making reasonable use of the property, that the difficulties are peculiar to the subject property, and are not the result of Appellant’s own actions.

Accordingly, the request for a variance from the required 25-foot setback from the road right-of-way to 15 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: Jay Miller, Chair

Date Issued: September 14, 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.