

BOARD OF APPEALS

September 28, 2022

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

AGENDA

DOCKET NO. AP2022-041: An appeal was made by Jamie & Corina Mills for a special exception to establish a contractor's equipment and storage yard with garage on property owned by the appellants and located at the vacant lot east of 12408 Licking Creek Road, Big Pool, Zoned Environmental Conservation. - **GRANTED**

DOCKET NO. AP2022-042: An appeal was made by Hagerstown IL-AL Investors LLC for a variance from the required 25 ft. total structure height to 57 ft. 6 in. for a future senior living community on property owned by Barry Schmidt and located at 11310 Robinwood Drive, Hagerstown, Zoned Business Local. - **GRANTED WITH CONDITIONS**

DOCKET NO. AP2022-043: An appeal was made by Asad & Velda Ghattas for a special exception to establish a place of worship in an existing commercial building on property owned by the appellants and located at 18501 Maugans Avenue Suite 105, Hagerstown, Zoned Highway Interchange. - **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 19, 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**

JAMES AND CORINA MILLS
Appellants

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Appeal No.: AP2022-041

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OPINION

James and Corina Mills (hereinafter "Appellants") request a special exception to establish a contractor's equipment and storage yard with garage at the subject property. The subject property is known as the vacant lot beside 12408 Licking Creek Road, Big Pool, Maryland and also identified as Tax ID No. 15-066977, and is zoned Environmental Conservation. The Board held a public hearing in this matter on September 28, 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. Appellants own the subject property known as 12408 Licking Creek Road, Big Pool, Maryland and known as Tax ID No. 15-066977. The subject property is zoned Environmental Conservation. Appellant's home is approximately two (2) minutes away, also on Licking Creek Road.

2. The subject property consists of 37.9 acres which is heavily forested and rises uphill from the roadway.

3. There are three (3) homes along this portion of Licking Creek Road, another trucking company and a division of the Washington Count Roads Department. There is very little traffic in the area during the day and there are long periods of time with no traffic.

4. Appellants own Licking Creek Paving and Hauling, LLC, which has five (5) tri-axle dump trucks, a skid loader, hauler and other paving equipment and machinery which must be stored. Currently the trucks and equipment are stored at a location in Pennsylvania, which is approximately twenty (20) minutes away from their home.

5. Appellants operate from approximately 6:00 a.m. until 4:00 p.m. when the trucks and equipment generally return from job sites. Appellants also have a contract with the State of Maryland for snow removal along Routes 494 and 57. Appellants are required to be at their assigned routes with one (1) hour during snow removal season.

6. Appellants propose to utilize three (3) acres of the subject property for the storage of their trucks and equipment. There will be some maintenance and repair of the trucks and equipment and some occasional cleaning performed at the subject property.

7. Appellants propose to construct a garage building at the subject property which will be used for storage and likely utilize dusk to dawn lighting. The building will be up the hill and not visible from the roadway.

8. There was no opposition presented for 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. 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 rural, mountain land which is sparsely populated and not experiencing growth at this time. The slope and plateau effect of the topography as well as the heavy forestation property provide enhanced buffering for the subject property. The subject property is located in a secluded area, far from other homes or uses, and on a road that experiences very little traffic.

The proposed use is not likely to create any odors, dust, gas, smoke, fumes, vibrations, or glare beyond what would be generated anywhere else in the zoning district.

It is noteworthy that two (2) similar uses are located nearby and do not appear to have any adverse impacts on the surrounding properties. Appellants intend to retain as much of the natural characteristics of the property which should help to mitigate any impact from the storage of vehicles at the proposed location. The Board finds that the proposed use is an appropriate use of land and/or structure.

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 contractor’s equipment and storage yard with garage 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: Jay Miller, Chair

Date Issued: October 27, 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**

HAGERSTOWN IL-AL * **Appeal No.: AP2022-042**

INVESTORS, LLC *

Appellant *

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OPINION

Hagerstown IL-AL Investors, LLC (hereinafter “Appellant”) requests a variance from the required 25-foot total structure height to 57 feet, 6 inches for a future senior living community at the subject property. The subject property is located at 11310 Robinwood Drive, Hagerstown, Maryland and is zoned Business Local. The Board held a public hearing in this matter on September 28, 2022. Appellant was represented by counsel, Zachary Kieffer, Esq. at the hearing.

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 11310 Robinwood Drive, Hagerstown, Maryland and is owned by Barry L. Schmidt. The subject property is zoned Business Local.

2. The subject property consists of an irregular, trapezoid shaped property which is bordered to the southwest by a medical office and urgent care facility, and to the

northeast by the remaining lands of Hagerstown Community College. A portion of the property panhandles around the rear of the medical facility.

3. Appellant is the contract purchaser of the subject property in connection with Smith/Packett Med-Com, LLC which develops senior living facilities.

4. Appellant proposes to construct a 4-story, 174 unit senior living facility that will include independent living, assisted living and a memory care unit. Appellant's sister company, Harmony Senior Services will operate the facility.

5. Appellant has several other similar projects in Maryland, including senior living facilities in Waldorf, Bowie, and Laurel. The typical design calls for 4 stories and includes 180 to 200 units.

6. Appellant prefers to build up rather than out in order to maintain shorter corridor lengths for the residents of the community. The typical layout has shared and communal spaces in the center of the design, with residences extending away from the center along corridors or wings.

7. The subject property is bordered to the northwest by a cluster of townhomes and villas which are part of Rosewood Village. The townhomes were previously approved for a height of 50 feet.

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

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).

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.)

Pursuant to Section 11.4 of the Ordinance, building height in the Business Local zoning district is restricted to 25 feet, “except as provided in Section 23.4”. That section provides under subsection (b):

- (b) In any Agricultural, Residential, or Business District, the height of a building may be extended to three stories, but not over forty-five (45) feet, if each side yard is increased in width on-half foot for each additional one foot of height above the normal maximum limit.

Thus for a structure that reached forty-five (45) feet in height, the side yard setbacks would have to increase by ten (10) feet, which would equal one-half foot for each of the twenty (20) feet above the normal maximum height. Such a modification would does not require approval from the Board of Appeals. Appellant seeks to exceed the 45-foot modification limit, and therefore applies for a variance of the maximum height restriction found in Section 11.4. Appellant’s height request is 32 feet, 6 inches more than the normal maximum height and proposed side yard setbacks all exceed the minimum required by more than sixteen (16) feet.

Appellant presented detailed testimony about its operation and design plans. The proposed senior living community is a U-shaped building that houses residents on the

“wings”, with services such as the kitchen, recreational activities and other common areas located in the center of the layout. Appellant further testified that the elevators are centrally located, requiring residents to traverse the corridor of their particular wing to get between floors or visit the common spaces. Appellant has found through experience that the corridors need to be as short as possible for the ease of the residents. It also permits Appellant to construct the community in smaller areas where they are not able to spread out across a large tract of land.

Appellant also presented evidence that the proposed 174-unit building was the minimum that could be done without jeopardizing the feasibility of the project. Their typical design is actually slightly larger and they have tailored the proposed design particularly for this project. If they were to build only three stories, it is likely they would not have sufficient units and even if so, the corridor lengths would increase making the community less user friendly to its customer base.

The subject property is an irregular lot and although somewhat small for such a use, the proposed design is able to accommodate appropriate setbacks. It should be noted that the proposed setbacks would even comply with the modification ratio set forth in Section 23.4(b). The size and shape of the lot create practical difficulties that force construction to go up, rather than out in this particular case. They were not the creation of Appellant and no less restrictive measure could be taken without materially changing the project that would make it not feasible. Moreover, the request is consistent with the height restriction relief granted to the neighboring townhomes in Rosewood Village. The proposed use fits with the uses in the surrounding area and is a permitted use within the zoning district.

Accordingly, the request for a variance from the required 25-foot total structure height to 57 feet, 6 inches for a future senior living community 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 the setbacks comply with the extension ratio as set forth in Section 23.4(b) of the Zoning Ordinance.

Date Issued: October 27, 2022

BOARD OF APPEALS

By: Jay Miller, Chair

Notice of Appeal Rights

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

ASAD AND VELDA GHATTAS
Appellants

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Appeal No.: AP2022-043

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OPINION

Asad and Velda Ghattas (hereinafter “Appellants”) request a special exception to establish a place of worship in existing commercial building at the subject property. The subject property is 18501 Maugans Avenue, Suite 105, Hagerstown, Maryland, and is zoned Highway Interchange. The Board held a public hearing in this matter on September 28, 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. Appellants own the subject property located at 18501 Maugans Avenue, Suite 105, Hagerstown, Maryland. The subject property is zoned Highway Interchange.
2. The subject property consists of approximately 3,448 of commercial space, in the Orchard Hills Shopping Center. It was formerly the location for Mountain View Emergency Animal Hospital.
3. Appellants propose to lease the subject property to Crossway Christian Fellowship to establish a location for their church services and activities.

4. Crossway Christian Fellowship offers services on Sundays from 10:30 a.m. to 12:00 p.m. and Wednesdays from 7:00 p.m. to 8:30 p.m. They also intend to host vacation Bible school in the summer and various other fellowship activities throughout the year.

5. The subject property has a seating capacity of 150 people. Crossway Christian Fellowship averages approximately seventy (70) attendees at a given service.

6. Appellants propose to improve the parking area by installing center aisle parking to increase capacity for the proposed use.

7. There was no opposition presented for 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. 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 has a mix of residential, business and commercial uses, situated in proximity to the highway interchange with Interstate 81. Maugans Avenue is a heavily travelled roadway connecting the north end of Hagerstown to Maugansville. This area has seen significant growth in recent years, including the subject property, restaurants and retail businesses and the medical facility on Crayton Boulevard. The proposed has no outward effects on the surrounding property except traffic to and from the site, and a periodic demand for parking. The subject property was formerly used as a 24-hour emergency animal hospital which was at times more intense than the proposed place of worship. The most intense times of use will be at times when other uses in the area will generally be off-peak. The proposed use is not likely to create any odors, dust, gas, smoke, fumes, vibrations, or glare. In fact, the proposed use is not likely to be notice from outside the building, except to the extent there are cars filling the parking lot. The Board finds that the proposed use is an appropriate use of land and/or structure.

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 place of worship in existing commercial 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: Jay Miller, Chair

Date Issued: October 27, 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.