

**BOARD OF APPEALS**

**November 16, 2022**

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

**AGENDA**

**REQUEST TO RECONSIDER FORMAL OPINION FOR 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, during the August 31, 2022 Hearing.- **DENIED**

**REVIEW OF THE FORMAL OPINION FOR DOCKET NO. AP2022-034 TO CORRECT CLERICAL ERRORS.**

**DOCKET NO. AP2022-045:** An appeal was made by Hancock MD #1 Solar LLC for a special exception to establish a solar energy generating system on vacant property north of 13964 Woodmont Road on property owned by Westernport Properties LLC and located at vacant lot Parcel #05022738, Hancock, Zoned Environmental Conservation.

**ORIGINALLY SCHEDULED FOR THE OCTOBER 26 HEARING.-DENIED**

**DOCKET NO. AP2022-047:** An appeal was made by Betty's Properties LLC for a special exception to establish a nursing/convalescent home on property owned by the appellant and located at 16202 & 16118 National Pike, Hagerstown, Zoned Residential Transition.-**GRANTED**

**DOCKET NO. AP2022-048:** An appeal was made by Vernon G. Martin for a change of non-conforming use from an office space to an auto sales office with vehicles on the property. The Property is owned by the appellant and located at 20315 Leitersburg Pike, Hagerstown, Zoned Agricultural Rural.-**GRANTED**

**DOCKET NO. AP2022-049: VOIDED**

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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 November 7, 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**

**OUTDOOR CONTRACTORS, INC.**

**Appellant**

**Appeal No.: AP2022-034**

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**AMENDED 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. The Board subsequently held a public hearing on November 16, 2022 to render a decision on the request for reconsideration submitted by the opposition in this case which is the subject of a separate opinion. In so doing, the Board voted unanimously that this Amended Opinion be issued to correct two (2) typographical errors.

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 general retail/merchandise store at the subject property. 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 general retail/merchandise store 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: November 23, 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**

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**HANCOCK MD #1 SOLAR, LLC**

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**Appeal No.: AP2022-045**

**Appellant**

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**OPINION**

Hancock MD #1 Solar, LLC (hereinafter “Appellant”) requests a special exception to establish a solar energy generating system at the subject property. The subject property is located at a vacant lot north of 13964 Woodmont Road, Hancock, Maryland and is zoned Environmental Conservation. The Board held a public hearing in this matter on November 16, 2022. Appellant was represented at the hearing by Benjamin S. Wechsler, 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 located at a vacant lot north of 13964 Woodmont Road, Hancock, Maryland and is owned by Westernport Properties, LLC. The subject property is zoned Environmental Conservation.

2. The subject property consists of approximately 21.46 acres of land which contains open space bounded by trees and vegetation. It is situated southwest of the intersection of Route 144 and Woodmont Road, in Hancock, Maryland. The property is



also bounded to the south by the Little Tonoloway Creek and to the north by a small tributary.

3. There are three (3) residential properties adjacent to the northern boundary and two (2) residential properties adjacent to the south boundary, across Little Tonoloway Creek. The adjacent residences are situated at an elevated level above the subject property.

4. Appellant has an agreement with the owner to develop the subject property and lease for solar energy generation. It is anticipated that initial lease term would be twenty-five (25) years with up to three (3) five-year extensions, totaling forty (40) years.

5. Appellant proposes to construct a solar energy generating facility on approximately 11.89 acres of the subject property. Appellant plans to construct approximately 5,400 panels, measuring 30 feet by 48 feet and mounted on driven posts nine (9) feet off of the ground. The area designated for the array would be fenced in as required by electrical codes. Appellant remains willing to install additional trees and vegetation or other landscape buffer elements.

6. The solar panels would be oriented towards the south and are designed to limit reflection and glare down to approximately two percent (2%).

7. Once operational, the inverters would emit sound not to exceed 72 decibels at a distance of one (1) meter and 67 decibels at a distance of three (3) meters.

8. The proposed project would take approximately 3 to 5 months to construct and during that time there would be some truck and equipment traffic to the subject property.

9. Once operational, the subject property would only be visited for quarterly inspection and maintenance, repairs as needed and seasonal mowing.

10. In 1991, the subject property was approved for a special exception to establish a wood inventory yard in Case No.

11. According to USDA records, the subject property contains Class 2, prime agricultural soils.

12. The subject property is situated in historic triangle between the Historic Toll House, Flint House, and the Woodmont Lodge.

13. Prior to the hearing, Appellant conducted a “town hall” meeting for residents and local citizens to provide information on the project and to address questions and concerns.

### **Rationale**

The Zoning Ordinance defines a solar energy generating system as a “grid-tie solar facility consisting of multiple solar arrays whose primary purpose is to generate electricity for distribution and/or sale in the public utility grid and not for onsite consumption.” Article 28A of the Zoning Ordinance. Solar Energy Generating Systems are classified as a special exception use in the Environmental Conservation zoning district.

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.

Considering the testimony and evidence presented and the aforementioned criteria, the Board must determine whether the proposed solar energy generating system at the subject property will have 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).

The subject property is in the Environmental Conservation zoning district for which the stated purpose is as follows:

The purpose of this district is to prescribe a zoning category for those areas where, because of natural geographic factors and existing land uses, it is considered feasible and desirable to conserve open spaces, water supply sources, woodland areas, wildlife, and other natural resources. This district may include extensive steeply sloped areas, stream valleys, water supply sources, and wooded areas adjacent thereto.

Section 5B.0 of the Zoning Ordinance. Given the description of the subject property and its characteristics, it appears to exemplify type of property envisioned by the Ordinance. The Board heard testimony from several nearby residents and citizens who opposed the project, citing the existing natural resources and wildlife



on the subject property. The opposition witnesses raised serious concerns about the disruption to existing open spaces, water sources such as Little Tonoloway Creek and prime agricultural soils at the subject property. The surrounding area is extremely rural in nature, with little growth and development. It is difficult to comprehend how constructing a solar array would be consistent with the orderly growth of the community, especially when the purpose of the zoning district is to preserve properties just like the subject property. The Board finds that the proposed use is not consistent with the purpose of the zoning district and it is not the most appropriate use of the land.

The undisputed testimony is that the subject property is bounded to the north and south by several residential properties. The residents of those properties testified that the construction of a solar array would pollute the viewshed because they would be forced to look upon it from their homes. Moreover, the Board heard testimony that the open space designated for development by Appellant, can be seen from their respective homes despite vegetative screening. The opposition witnesses raised legitimate concerns about disruption to the peace and enjoyment of their homes as well as the detrimental effect on property values.

Appellant's presentation was thorough and attempted to address the concerns of those in opposition. There was no dispute that once operational, the proposed use would have minimal impact on traffic and thus did not create any traffic concerns. The Board heard testimony that the use would not create any odors, dust, smoke or gas other than during construction, and that the noise would not exceed that which is produced in conversation between two individuals. Design elements have evolved to limit reflection and glare to an almost nonexistent level and the panels will be situated so that they are not directly facing

any of the existing residences.

However, the Board finds that the evidence presented is lacking in terms of compatibility. Appellant's proposed plan is to construct 5,400 solar panels on approximately 11 acres of open space in the middle of the subject property. Said open space is situated below the elevation of the surrounding homes and even with vegetative screening, can be seen at all times during the year. The project would disrupt prime agricultural soils and would be located between an existing creek and one of its tributaries. Despite the general low intensity nature of the use, its impact could be significant to the subject property, and it does not seem compatible with the surrounding properties. The Board finds that the proposed use at the subject property will have 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 fails to meet the criteria for a special exception and should be denied.

Accordingly, the request for a special exception to establish a Solar Energy Generation System at the subject property is DENIED, by a vote of 5-0.

BOARD OF APPEALS

By: Jay Miller, Chair

**Date Issued: December 15, 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**

**BETTY’S WISH/**

**BETTY’S PROPERTIES, LLC**

**Appellant**

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**Appeal No.: AP2022-047**

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**OPINION**

Betty’s Wish/Betty’s Properties, LLC (hereinafter “Appellant”) requests a special exception to establish a nursing/convalescent home at the subject property. The subject property is known as 16202 and 16118 National Pike, Hagerstown, Maryland, and is zoned Rural, Transition. The Board held a public hearing in this matter on November 16, 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. Appellant is the owner of the subject property known as 16202 and 16118 National Pike, Hagerstown, Maryland. The property is zoned Rural, Transition.
2. The property located at 16202 National Pike has an existing 2,100-square foot dwelling and is accessed through Needy’s Lane. The adjacent property at 16118 National Pike has a run-down dwelling which needs to be demolished.



3. Betty's Wish is a 501(c)(3), nonprofit organization founded to provide care and housing to elderly citizens in need.

4. Appellant proposed to construct a 60-foot by 35-foot addition, as well as a 20-foot by 30-foot sunroom and walking paths throughout the subject property. Appellant also proposes to demolish the dwelling in disrepair and vacate the lot lines between 16202 and 16118 National Pike.

5. The purpose of the additions would be to create a residential care facility called "Betty's House" for elder care patients, with a focus on those suffering from dementia. The proposed facility would have a maximum of nine (9) patients and a maximum of thirteen (13) staff members, consisting of both paid employees and volunteers.

6. The proposed facility would be staffed 24 hours per day, 7 days per week with three (3) staff persons on duty during a shift.

7. The proposed facility will allow visitation by family members at any time, but others will be limited to specific visitation hours.

8. The subject property can accommodate six (6) parking spaces which meets the requirement of one (1) space per patient bed and one (1) space per staff person on duty.

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. 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, albeit with some transitional uses generally found when adjacent to more intense zoning districts. Planning staff's review of the proposed facility found that it was generally consistent with the Comprehensive Plan for the County and the Board agrees based on the evidence presented. The proposed use is not of high intensity and maintains orderly growth of the surrounding community.

The traffic conditions at the subject property are not of great concern. The subject property is currently served by Needy's Lane which was sufficient for private, residential use. The Board anticipates that Appellant may need to make some improvements to create sufficient access to the property for visitors and staff. Nonetheless, there are no existing traffic conditions which would render the proposed use problematic. The facility will not generate a lot of traffic on a daily basis. The proposed use is also not likely to create any odors, dust, gas, smoke, fumes, vibrations, or glare beyond what is already generated in the immediate area.

The Board does not have evidence that the proposed use will disrupt the peaceful enjoyment of people in their homes. Moreover, there is no evidence that the proposed use will materially affect nearby property values. There is an obvious benefit to having such a facility in the community to serve local residents and provide an alternative to more commercialized elder care operations. As a result, the Board finds that the proposed use is an appropriate use of land and/or structure. Allowing the proposed additions and changes to the subject property will facilitate the comfort and convenience Appellant seeks to provide its patients. The proposed use is consistent with the spirit and purpose of the Ordinance and promotes the general welfare of the community.

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 nursing /convalescent home 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: December 13, 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**

**VERNON MARTIN**

**Appellant**

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**Appeal No.: AP2022-048**

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**OPINION**

Vernon Martin (hereinafter “Appellant”) requests to change a non-conforming use from an office space to an auto sales office with vehicles at the subject property. The subject property is known as 20315 Leitersburg Pike, Hagerstown, Maryland, and is zoned Agricultural, Rural. The Board held a public hearing in this matter on November 16, 2022. Appellant was represented by counsel, Edward L. Kuczynski, Esq. before the Board.

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. Appellant is the owner of the subject property known as 20315 Leitersburg Pike, Hagerstown, Maryland. The property is zoned Agricultural, Rural.
2. Appellant has owned the subject property since 2012 and it has been used for a variety of commercial uses since that time.



3. The subject property was originally operated as “Jerry’s Snack Bar” in conjunction with the movie theaters at Leitersburg Cinemas.

4. In 1993, the subject property was approved for a special exception for an antiques and collectibles shop with small convenience store area in Case No. AP93-079. Since that time, the property has been used for commercial purposes, including most recently for office space.

5. Somerset Fire and Security leased the subject property from Appellant until the lease was terminated on July 31, 2022. Prior to termination, the property was being used for Somerset’s offices.

6. The subject property has been vacant since July 31, 2022.

7. Michelle Jones-Smith and her husband Gregory Smith own American Auto Sales which sells used vehicles and provides accessory services including tag, title and financing. The business is currently located at 20126 B Leitersburg Pike, Hagerstown, Maryland.

8. American Auto Sales expects to maintain a small inventory of approximately twenty (20) cars at any given time. Vehicles will be driven into the property and parked out front. The business will operate Monday through Friday, from 10:00 a.m. to 5:00 p.m. There will not be any auto repair work done at the property. The business anticipates a few customers each week and approximately one (1) to three (3) sales each month.

9. There was no opposition presented to this appeal.

### **Rationale**

Section 4.3 of the Zoning Ordinance addresses non-conforming uses and provides:

Any building, structure or premises lawfully existing at the time of the adoption of this Ordinance, or lawfully existing at the time this Ordinance is subsequently amended, may continue to be used without further imposition of use, dimensional, buffer or other Ordinance requirements even though such building, structure or premises does not conform to use, dimensional, buffer or other Ordinance regulations of the zoning district in which it is located.

The Ordinance further provides that “no land building, structure, or premises where a nonconforming use has ceased for six (6) months or more shall thereafter be used except in conformance with this Zoning Ordinance.” There is no dispute that the use of the subject property was nonconforming because it pre-dated the Zoning Ordinance. There appears to be a lengthy history of varied uses at the subject property. Appellant’s request calls upon the Board to determine whether the previous nonconforming use has ceased and whether the change in use is appropriate.

The timeline in this case is important because the evidence establishes there was a cessation of the prior nonconforming use as an office. Appellant represented that the lease was terminated with the prior tenant on July 31, 2022 and the subject property has remained vacant since that time. The undisputed timeline confirms that the prior nonconforming use was active within six (6) months of Appellant’s request to the Board. Furthermore, Appellant’s proposed use is similar to the prior office use, albeit, with vehicles parked on the lot. From the outside, the proposed use will appear similar to nearby businesses such as Valley Supply, Pen Mar Sales and Life Saver, many of which benefit from a Rural Business Overlay. Ms. Jones-Smith testified that there would be minimal daily traffic and no operations on the weekends. The business would not perform repairs and primarily operated as processing location for the occasional sale of used cars. The Board finds the impact will be relatively low on the surrounding properties and that the use is consistent with neighboring and nearby uses.

Accordingly, the request to change a non-conforming use from an office space to an auto sales office with vehicles at the subject property is GRANTED, by a vote of 3-2. 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: December 13, 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.