

BOARD OF ZONING APPEALS

April 4, 2018

LOCATION: Washington County Court House, Court Room 1, 24 Summit Avenue, Hagerstown – 7:00 p.m.

AGENDA

DOCKET NO. AP2017-031: An appeal made by the Estate of Ned Amsley, et al. of the Planning Commission’s approval of site plan SP-16-005 Bowman Cornfield on property owned by Bowman Spielman LLC and located at 15919 Spielman Road, Williamsport, zoned Highway Interchange – **SITE PLAN APPROVED**

DOCKET NO. AP2018-010: An appeal made by Division of Environmental Management for a variance from minimum 75 ft. rear yard setback to 22 ft. from generator and variance from minimum 75 ft. side yard setback to 74 ft. from generator and 64 ft. from pump station and 30 ft. right side yard from both generator and pump station building on property owned by the Board of Washington County Commissioners and located at 9932 Governor Lane Boulevard, Williamsport, zoned Planned Industrial - **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 Kathy Kroboth at 240-313-2469 Voice, 240-313-2130 Voice/TDD to make arrangements no later than March 26, 2018. 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.

Neal Glessner, Chairman
Board of Zoning Appeals

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

**Division of Environmental
Management
Applicant**

Appeal No. AP2018-010

OPINION

This appeal is a request for variances from the minimum 75' rear yard setback to 22' from a generator; from the minimum 75' side yard setback to 74' from a generator; from the required 75' left side yard setback to 64' from a pump station; and from the minimum right side yard setback of 75' to 30' from a generator and a pump station building. The subject property is located at 9932 Governor Lane Boulevard, Williamsport, Maryland; is owned by the Board of County Commissioners; and is zoned Planned Industrial. The Board held a public hearing on the matter on April 4, 2018.

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 Applicant seeks variance relief to construct an upgraded sewage pump station on the subject property.
2. The County is upgrading capacity at the station from 150 gallons per minute to 450 gallons per minute.
3. The increased capacity is required due to increased development in the area served by the pump station.
4. The upgrade requires a larger wet well, generator, and pumps.
5. The generator will be insulated to reduce noise.
6. The Maryland Department of the Environment requires a generator backup for this facility.

7. The facility will be located within an 8'×12' building.
8. The existing pump station does not comply with existing setback standards.
9. The subject property is 115' in width.
10. Strict compliance with applicable setbacks results in the complete elimination of all buildable area on the subject lot.
11. The proposed capacity increases are necessary to meet existing demand and to secure the public welfare.
12. Surrounding property owners consent to the relief proposed.
13. There was no opposition presented to this request.

Rationale

This Board has authority to grant variances 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).

This property is unique because strict compliance with the setback standards eliminates the entire buildable area of the lot. The subject property is being used for a permitted purpose; it has long been used as a sewage pump station, and the proposed improvements continue that use. Strict compliance would frustrate the established and permitted use of the property. Furthermore, the improvements result in increased and intensified capacity of the pump station, as required by regulatory authorities. No lesser relaxation of the setbacks is feasible, given the size and shape of the lot, and strict compliance would result in the complete elimination of all buildable area on the lot. Finally, the improvement of this use is unobjectionable, as it has long occurred on the

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).

subject property, is located in an industrial area, and is required to meet existing development demands. The grant of the requested variance relief observes the spirit of the Ordinance and secures the public safety and welfare.

Accordingly, these requests for variances are hereby GRANTED by a vote of 5-0.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: May 3, 2018

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

**Estate of Ned Amsley *et al.*
Petitioners**

Appeal No. AP2017-031

OPINION

This action is an appeal of the Planning Commission’s approval of site plan SP-16-005 Bowman Cornfield. The subject property is located at 15919 Spielman Road, Williamsport, Maryland; is owned by Bowman Spielman LLC; and is zoned Highway Interchange. The Board held a public hearing on the matter on April 4, 2018.

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. Bowman Spielman LLC, the Applicant for site plan approval, submitted a proposed site plan (SP-16-005) for a “Mixed Use Food Sales/Retail/Office/Fuel Sales” facility on the subject property.
2. The property is 9.11 acres in area, more or less, and is zoned Highway Interchange.
3. The site plan showed a building of 11,180 square foot gross area, with a 5,000 square foot restaurant area; a 4,322 square foot food and fuel [and retail] sales area; and 1,858 square foot office area.
4. The proposed facility has 16 fueling stations for cars and motorcycles and six diesel fueling stations for trucks.
5. All fueling stations are located under canopies.
6. There are 107 proposed parking spaces for cars and motorcycles.

7. There are four proposed parking spaces for tractor trailers.
8. There are no provisions for showers or overnight accommodations for truck drivers.
9. There is no truck repair, maintenance, service, or truck wash proposed for the site.
10. There is a car wash proposed for a portion of the site.
11. Retail sales are proposed to accommodate motorists and travelers.
12. A restaurant use is proposed to service motorist, travelers, and other customers.

Rationale

A site plan is required for all uses in the Highway Interchange district. Zoning Ordinance § 19.5. The Planning Commission approved the site plan, and Petitioners appealed. This Board has jurisdiction to “hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in regard to the enforcement of this Ordinance, the Washington County Forest Conservation Ordinance, or of any ordinance adopted thereto.” § 25.2(a). We review this matter *de novo*.

We begin by noting that significant testimony was presented regarding the desirability or lack of desirability of the proposed facility at the subject property. However, this appeal is limited to the narrow legal issue of whether the Applicant was entitled to issuance of site plan approval or, more pointedly as this is a *de novo* hearing, whether the Applicant has carried its burden for site plan approval. Therefore, the question of whether the use is appropriate for the subject property or the subject neighborhood (or whether some other use might be more desirable at that location) is not before us, because, as we will explain, we have determined that the Applicant has submitted a site plan for uses allowed in the HI district as a matter of right.

The Applicant seeks approval of a site plan to operate a mixed-use facility on the subject property. The evidence clearly established that the use would predominantly cater to motorists rather than truckers. The site plan indicates that

there would be sixteen fueling stations for cars, pickups, and motorcycles versus six stations for tractor trailers (which fuel on both sides of the tractor). The site plan shows 107 parking spaces for cars, pickups, and motorcycles, and four spaces for tractor trailers. Notwithstanding the forgoing, the Petitioners aver that the use is a "Truck Stop" as defined by the Ordinance. As such, they claim that site plan approval is impossible, because a "Truck Stop" is a special exception use in the HI district, § 19.3(g), and the Applicant has not applied for, or received, a grant of a special exception.

We are not persuaded. The term "Truck Stop" is defined by the Ordinance as, "A structure or land used or intended to be used primarily for the sale of fuel for trucks and, usually long term truck parking, incidental service or repair of trucks, overnight accommodations, or restaurant facilities open to serve the general public; or a group of facilities consisting of such a use and attendant eating, repair, sleeping or truck parking facilities. As used in this definition, the term "trucks" does not include any vehicle whose maximum gross weight is 10,000 pounds or less, as rated by the State Motor Vehicle Administration." Article 28A. The Petitioners urge that since a portion of the subject property will be used "primarily for the sale of fuel for trucks," the use is a "Truck Stop," as defined by the Washington County Zoning Ordinance. Since the proposed facility contains six fueling stations for trucks, they reason that the use is a "Truck Stop" requiring special exception approval.

We believe, however, that a fairer reading of the definition of "Truck Stop" requires consideration of all of the qualifications and descriptions used therein. The Ordinance recognizes that a "Truck Stop" is comprised of various components which, when taken together, equal a "Truck Stop," as defined and regulated by the Ordinance. Thus, a "Truck Stop" is "a structure or land used or intended to be used primarily for the sale of fuel for trucks" and some other component or components of the remainder of the definition. These components include, "long term truck parking, incidental service or repair of trucks, overnight accommodations, or restaurant facilities open to serve the general public; or a group of facilities consisting of such a use and attendant eating, repair, sleeping or truck parking facilities."

The evidence established that the facility, considered as a whole, is not proposed "to be used primarily for the sale of fuel for trucks." While truck fuel

sales will admittedly occur on the subject property, the sale of fuel to trucks is not the primary use of the property. The New Oxford American Dictionary, Second Edition, classifies the word “primarily” as an adverb that means, “for the most part: mainly.” Thus, the adverbial use of “primarily” qualifies the preceding verb “used,” so the definition of “Truck Stop” can be read as requiring “structure or land” used mainly for the “sale of fuel for trucks,” and one or more of the additional uses set forth following the first use of the word “and” in the definition. Here, while there will be fuel sales for trucks, that use is not the main use of the property, but is merely one of a multitude of uses occurring thereon, including retail sales, food sales, and office uses. Moreover, the absence of a required additional use, such as “long term truck parking, incidental service or repair of trucks, overnight accommodations, or restaurant facilities open to serve the general public; or a group of facilities consisting of such a use and attendant eating, repair, sleeping or truck parking facilities” compels us to conclude that use applied for, and given site plan approval, is not a “Truck Stop” as defined in Article 28A of the Ordinance.

The Applicant applied for a mixed-use facility that includes a restaurant and area for the retail sales of items useful to highway travelers and neighborhood residents. Retail uses are allowed in the HI district §§ 19.2(a); 12.1(a).

Petitioners argue that the retail use is a “Convenience Store,” which the Ordinance defines as, “Any retail establishment offering for sale: prepackaged or pre-processed food products, household items, and other goods commonly associated with the same and having a gross floor area of 5,000 square feet or less. Such establishments may also sell gasoline at retail prices. The area utilized for the sale of gasoline shall be considered as part of the gross floor area.” Article 28A. As the proposed retail on the site plan exceeds 5,000 square feet of area, Petitioners argue, this site plan should be disapproved.

We are not persuaded that the use as proposed is a “Convenience Store,” as defined by the Ordinance. A “Convenience Store” is limited to a dimensional area of 5,000 square feet. The Applicant's site plan, however, proposes several different uses in a single structure. These uses include a fast food restaurant, office use, and retail, food, and fuel sales. The retail, food, and fuel sales area comprises 4,322 square feet of the total structure, and as such, even if we conclude, *arguendo*, that the retail, food, and fuel sales portion of the structure were a “Convenience Store,”

it does not exceed the dimensional limit of 5,000 square feet. We do conclude, for the purpose of this review, that the site plan sets forth an amalgamation of uses, including retail uses, as principally permitted in this district. The inclusion of retail uses in conjunction with other non-related, non-retail uses, does not run afoul of the Ordinance.

Finally, inasmuch as the Petitioners argue that the site plan should be disapproved because it does not identify the proposed end user or users of the facility, we conclude that there is no such requirement in the Ordinance. Section 4.11 of the Ordinance sets forth requirements for site plans, and there is no requirement that one or more end users be specifically or particularly identified.

The Applicant has satisfied the requirements of § 4.11 of the Ordinance and met its burden for approval of the site plan. Accordingly, for all the forgoing reasons, the proposed site plan, SP-16-005 Bowman Cornfield, is APPROVED by a vote of 5–0, subject to any conditions or restrictions as imposed by the Planning Commission.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: May 4, 2018