

BOARD OF APPEALS

April 11, 2018

County Administration Building, 100 W. Washington St., Meeting Room 2000, Hagerstown, at 7:00 p.m.

AGENDA

DOCKET NO. AP2018-008: An appeal made by Mark W. & Billie Jo Sellers for a special exception to establish a temporary or seasonal retail ice cream trailer on property owned by the Appellant and located at 6138 Clevelandtown Road, Boonsboro, zoned Preservation - **GRANTED**

DOCKET NO. AP2018-009: An appeal made by Alfred E. Smith, Jr. for a variance from minimum 20 ft. front yard setback to 12 ft. and 8 ft. left side yard setback to 5 ft. for construction of a two story addition to dwelling on property owned by the Appellant and located at 18807 Crofton Road, Hagerstown, zoned Residential Urban - **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 April 2, 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.

Paul Fulk, Co-Chairman
Board of Zoning Appeals

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

**Mark W. & Billie Jo Sellers
Applicants**

Appeal No. AP2018-008

OPINION

This appeal is a request for a special exception to establish a temporary or seasonal retail ice cream trailer. The subject property is located at 6138 Clevelandtown Road, Boonsboro, Maryland; is owned by the Applicants; and is zoned Preservation. The Board held a public hearing on the matter on April 11, 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 Applicants seek a special exception to establish a temporary or seasonal retail use selling hand-dipped and pre-packed Trickling Springs ice cream and salads on the subject property.
2. The 22-acre property is currently used to grow and sell Christmas trees.
3. An aquaponics greenhouse is located on the subject property, where produce and fish are grown for retail and wholesale sales.
4. The property has long been used as a Christmas tree farm.
5. Retail Christmas tree sales occur from Black Friday until close to Christmas and have so occurred from the property for approximately 35 years.
6. The ice cream and produce (pre-made salads) sales will be sold from a Health Department-approved trailer from May 1 through October 31, annually.
7. Hours of operation during that period would be from noon to 10 p.m., generally seven days per week.

8. The retail sales operation will employ 2–3 high school students, with family members also assisting to cover retail responsibilities.

9. Julie Blair, a contiguous property owner, testified in support of the proposed use.

10. No opposition was presented to this request.

11. The use conforms to the Comprehensive Plan, which calls for the maintenance of the rural portions of the county and will not be incompatible with the existing neighborhood.

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.

The Applicants have met their burden for a special exception. The seasonal retail use of the property to sell ice cream and salads is a reasonable, non-objectionable use of the property. Seasonal retail sales of Christmas trees have long occurred on the property, without detriment to the neighborhood. The property is of sufficient size to support the use. Access to the property is adequate, with two existing access points to Clevelandtown Road, and sufficient parking area to accommodate customers. No one testified in opposition to this appeal. The evidence showed that the establishment of this special exception use at this site 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). In fact, a neighbor specifically testified in favor of the use. Furthermore, establishment of the use is compatible with the surrounding neighborhood and in conformity with the Comprehensive Plan. As such, the grant of the special exception is appropriate and warranted by the testimony and evidence before us. The special exception is GRANTED as set forth below by a vote of 5–0.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: May 9, 2018

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

Alfred E. Smith, Jr.
Applicant

Appeal No. AP2018-009

OPINION

This appeal is a request for a variance from the minimum 20' front yard setback to 12' and from the minimum 8' side yard setback to 5' for construction of a two-story addition to a dwelling. The subject property is located at 18807 Crofton Road, Hagerstown, Maryland; is owned by the Applicant; and is zoned Residential Urban. The Board held a public hearing on the matter on April 11, 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 a two-story addition to the existing dwelling on the subject property.
2. The subject property is an irregular pie-shaped lot.
3. The proposed site for the structure is the most-logical placement of the addition given the layout of the existing dwelling.
4. An attached accessory structure that does not meet setback standards will be removed as part of the renovation project.
5. The new entrance to the property will improve site distance.
6. The proposed placement of the garage will result in neighbors having a better view of the Fountain Head Country Club golf course.
7. There was no opposition presented to this request, and the Applicants' neighbors have no objection to the requested relief. *See Exhibit 1.*

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 it is pie-shaped and located along a curve in Crofton Road, constraining the buildable envelope on the lot. The proposed use is principally permitted, and strict compliance with the setback standards would frustrate the reasonable expansion of the use already occurring on the property. No lesser relaxation of the setbacks is feasible, given the size and shape of the lot, and variance relief will enhance the aesthetics of the neighborhood by removing a non-conforming accessory structure and increasing visibility of the golf course. For these reasons, we conclude that 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 10, 2018

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).