

**BOARD OF APPEALS**

**May 2, 2018**

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

**AGENDA**

**DOCKET NO. AP2018-011:** An appeal made by U.S. Cellular Corporation for a special exception to install a 199 ft. commercial communication tower and variance from minimum 199 ft. from lease area to 50 ft. on all sides on property owned by Robert W. & Edna M. Hendershot and located at 15020 Mountain Road, Hancock, zoned Environmental Conservation - **DENIED**

**DOCKET NO. AP2018-012:** An appeal made by James F. Neill for a variance from minimum buffer yard of 25 ft. from rear and right side yards to 10 ft. for addition to existing auto body shop on property owned by the Appellant and located at 13003 Salem Avenue, Hagerstown, zoned Highway Interchange - **GRANTED**

**DOCKET NO. AP2018-013:** An appeal made by John J. Bogley & Sterling J. Bogley Trustees for a special exception to establish a banquet/reception facility and variance from requirement to provide a durable and dustless surface for required parking on property owned by the Appellant and located at 20166 Benevola Church Road, Boonsboro, zoned Agricultural (Rural) - **DENIED**

**DOCKET NO. AP2018-014:** An appeal made by JSRT Farms LLC for a special exception to establish a Farmer's Market on property owned by the Appellant and located at 4236 Main Street, Rohrsersville, zoned Rural Village and Preservation - **GRANTED**

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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 Kathy Kroboth at 240-313-2469 Voice, 240-313-2130 Voice/TDD to make arrangements no later than April 23, 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, Chairman  
Board of Zoning Appeals

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

**U.S. CELLULAR CORPORATION**  
**Applicant**

**Appeal No. AP2018-011**

**OPINION**

This action is an appeal for a special exception to construct a 195' monopole communication tower. The subject property is known as 15020 Mountain Road, Hancock, Maryland, is owned by Robert W. and Edna M. Hendershot, and is zoned Environmental Conservation. A public hearing was held before the Board on May 2, 2018.

**Findings of Fact**

The following findings of fact are made by the Board, based upon the testimony given and all data and other evidence presented, and upon a study of the specific property involved, as well as the neighborhood:

1. The applicant seeks approval to construct a monopole communication tower that will be 195' in height.
2. The applicant has leased a 100'×100' area on the subject property.
3. A 60'×60' enclosed compound will be established in the leased area, in which the tower will be situated.
4. Traffic will be minimal to the proposed site, and only for routine maintenance and/or repair.
5. Appellant issued a statement of need identifying a gap in coverage in cellular service in the area surrounding the proposed site. The coverage gap results from licensing and boundary agreements related to other cellular service providers.
6. There is an existing communication tower, known as Stumpf Tower, located approximately three thousand (3,000) feet from the proposed site.

## **Rationale**

The Board has authority to grant a special exception pursuant to § 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.” § 28.62. The Ordinance specifically acknowledges the need for wireless towers while seeking to minimize their obtrusive visual impact: “It is the intent of these regulations to minimize the visual impact of towers and equipment, to minimize the number of towers through shared use and co-location, to encourage utilization of technological designs that will either eliminate or reduce the need for new towers to support equipment and to ensure that all towers and equipment are compatible with surrounding land uses while assuring wireless communications service to the citizens of Washington County.” § 4.22.

Wireless cellular communication is a technology that is integral to the functioning of this community. It serves individuals, businesses, and governments with data and voice capabilities, promotes public safety, and facilitates emergency response. However, the need for this tower is has not been clearly established by the evidence. Appellant’s representative testified that a coverage gap exists, but could not explain why co-location on existing communication towers would not eliminate such a coverage gap. Moreover, the Board heard testimony from several nearby residents who reported that they experience good cellular service with little or no disruption in service. As previously stated, the regulations of the Ordinance exist to encourage co-location and minimize the impact or location of multiple towers in the same areas. There is little, if any evidence in the record to support a finding that co-location is not feasible and that a new tower is necessary to meet supposed need in the area identified.

The Board heard testimony from Kathy Stumpf whose family owns farmland wherein a cellular communication tower is located. The Stumpf tower is approximately three thousand (3,000) feet from the proposed site on the subject property. She questioned the issue of co-location on that tower and also the adverse effects on Pennsylvania residents, although they were not given notice of the hearing. The tower would be visible at a great distance and within the scenic views of Sideling Hill and other

conservation lands in the area. The Board heard further opposition testimony about the effect on wildlife in the area and the disruption to nature.

The Appellant's proposed tower is not compatible and adverse to the character and integrity of surrounding properties. Although located in a rural area with minimal traffic impact, there were concerns about the location of the proposed communication tower and important questions that could not be answered. The Board heard numerous witnesses testify that the proposed use was incompatible with the neighborhood; disruptive of neighbors' quiet enjoyment of their properties; detrimental to surrounding property values; and that the proposal was an inappropriate use of land or structure. It appears from the evidence that the placement of the tower at the proposed site would 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).

Based upon all of the testimony and evidence presented, this Board finds that the subject request does adversely affect the public health, safety, security, morals, or general welfare. Accordingly, for the reasons set forth herein, this appeal is hereby DENIED by a vote of 3-2.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: May 29, 2018

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

**JAMES F. NEILL  
Applicant**

**Appeal No. AP2018-012**

**OPINION**

This appeal is a request for a variance from the minimum right side yard and rear yard buffer of twenty-five (25) feet to ten (10) feet to construct an addition to an existing body shop. The subject property is located at 13003 Salem Avenue, Hagerstown, Maryland; is owned by the Applicant; and is zoned Highway Interchange. The Board held a public hearing on the matter on May 2, 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 a variance to construct an addition to an existing body shop currently operating on the subject property. Applicant is seeking to expand the enclosed space on the subject property to accommodate automotive repairs, body work and painting.
2. The Applicant purchased the subject property in 1994, which was zoned Highway Interchange 1 and required setbacks of only ten (10) feet.
3. In 2004, Applicant obtained Site Plan Approval for the construction of a new building for his automotive repair and body shop work.
4. In 2006, a developer purchased the property surrounding the subject property and pursued an annexation into the City of Hagerstown in order to obtain the benefit of city water and sewer service. As a result, the surrounding properties were zoned residential. The subject property was not part of that annexation.

5. The Applicant has installed greenscape, including Leeland Cyprus as screening around the boundary of the subject property.
6. There was no opposition presented to Applicant's request.

### **Rationale**

This Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56. \* "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). In the instant case, the side and rear yard buffer requirements are twenty-five (25) feet because the subject property abuts residential property.

This property is unique because of its size and shape and its outlier status vis-à-vis the 2006 annexation into the City of Hagerstown. The subject property was "annexed around" in order to facilitate the development of resulting residential property around it. The subject property is considerably small for its zoning designation and given the imposition of an additional fifteen (15) feet of buffer on the side and rear. "'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).)

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\* "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 Applicant has demonstrated a practical difficulty if variance relief is not granted. The proposed use of the property is permitted and has long occurred thereon. The within variance request is only necessary due to the changes to surrounding properties, notably the annexation and rezoning of those properties to residential. Strict compliance would increase adverse effects emanating from the operation or prevent a permitted use to occur on a portion of the property. Likewise, strict compliance would achieve little practical benefit, as the proposed addition seeks to enclose more of Applicant's automotive repair operation which should be of benefit to the surrounding residential properties. For all these reasons, we conclude that the grant of variance relief secures public safety and welfare and upholds the spirit of the Ordinance.

Accordingly, this request for a variance is hereby GRANTED by a vote of 5-0.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: May 24, 2018

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

**John J. Bogley and Sterling J. Bogley,  
Trustees  
Appellant**

**Appeal No. AP2018-013**

**OPINION**

This appeal is a request for a special exception to establish a banquet/reception facility, and for variances from the requirement to provide a durable and dustless surface for required parking. The subject property is located at 20166 Benevola Church Road, Boonsboro, Maryland; is owned by the Appellant; and is zoned Agricultural (Rural). The Board held a public hearing on the matter on May 2, 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 Appellants seeks a special exception, with associated variance relief, to establish a banquet/reception facility on the subject property.
2. The subject property is currently operated as a farm.
3. Appellants plan to limit the number of attendees to any one event to three hundred (300) and are willing to reduce that number as a condition of approval for the proposed use.
4. Appellants plan to operate the banquet/reception facility on weekends, Friday through Sunday, from the late spring to early fall each year. On Fridays, the facility would be open from 4:00 p.m. to 10:00 p.m., Saturdays from 12:00 p.m. to 10:00 p.m. and Sundays from 12:00 p.m. to 8:00 p.m.
5. Events at the facility would have outdoor music, require portable restrooms and would include the erection of tents for catered food service.



6. Appellants have designated a field area on the eastern portion of the property which abuts Toms Road and Benevola Church Road for parking of at least one hundred (100) vehicles.
7. Appellants plan to direct and route traffic to events via Benevola Church Road and to avoid Toms Road due to its narrow dimensions and inability to safely accommodate heavy traffic.

**Rationale**  
*The 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.

The proposed use is a permitted special exception use in this zone, and one that has been adopted in number of other areas in the county. However, Appellants’ request met with significant opposition from neighboring property owners. While the property is of adequate size to accommodate the use and buffer it generally from surrounding residences, there was credible evidence presented to suggest that noise and traffic would adversely affect the surrounding properties. The subject property is generally open and centrally located to the surrounding properties such that any prolonged noise can be heard by those neighboring property owners. There is little, if any noise buffer and Appellants did not conduct a noise/sound study or present other evidence that might mitigate such concerns.

Furthermore, the evidence established that the use would have a detrimental effect on traffic along Toms Road. Several nearby residents testified that Toms Road is already a dangerous road with limited visibility, winding turns and barely enough room for two (2) cars to pass each other safely. There was great concern raised that despite Appellants’ efforts to route traffic onto Benevola Church Road, attendees would still choose Toms Road as a faster or more convenient route or be directed there by navigation.

The evidence showed that while the use conforms to the Plan, it is not compatible with the existing neighborhood. It further showed that due to noise, and traffic issues related to the use or overuse of Toms Road, the establishment of this special exception use at this site 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). Therefore, the special exception is DENIED by a vote of 5–0.

### *The Variance*

As the variance request was directly related to the Appellants’ use of the banquet/reception facility which has not been approved, we need not reach the merits of this request; it is moot.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: May 29, 2018

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

**JSRT FARMS, LLC  
Applicant**

**Appeal No. AP2018-014**

**OPINION**

This action is an appeal for a special exception to establish a Farmer's Market. The subject property is known as 4236 Main Street, Rohrersville, Maryland, is owned by JSRT Farms, LLC, and is zoned Rural Village and Preservation. A public hearing was held before the Board on May 2, 2018.

**Findings of Fact**

The following findings of fact are made by the Board, based upon the testimony given and all data and other evidence presented, and upon a study of the specific property involved, as well as the neighborhood:

1. The applicant seeks approval to establish a farmer's market at the subject property which is already operated as a winery and event center.
2. The proposed farmer's market would operate on Fridays, from 6:00 p.m. to 9:00 p.m. and would allow third-party vendors to sell goods.
3. The applicant plans to utilize the existing one hundred five (105) parking spaces to accommodate customers to the farmer's market. There will be no employees or staff provided by the applicant.
4. Although signage has not been discussed, the applicant expects any signage used for the farmer's market to be used temporarily and only on days of operation.
5. There was no opposition presented to the applicant's request.

**Rationale**

The Board has authority to grant a special exception pursuant to § 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.” § 28.62. The use of a Farmer’s Market is delineated as a special exception use on the Table of Land Use Regulations, § 3.3(1)D.

The Appellant’s proposed Farmer’s Market is compatible with and not adverse to the character and integrity of surrounding properties. The testimony at the hearing demonstrated that such use would be part and parcel to the existing winery and event operations, and its impact outside the subject property would be minimal if any. No evidence was presented that the proposed use was incompatible with the neighborhood; disruptive of neighbors’ quiet enjoyment of their properties; detrimental to surrounding property values; generative of excessive odors, dust, gas, smoke, fumes, vibrations, or glare; generative of traffic that would exceed the capacity of existing infrastructure; or that the proposal was an inappropriate use of land or structure. To the contrary, such a use is consistent with related uses in rural areas and appears to be a good fit for the subject property. The establishment of Farmer’s Market on 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).

Based upon all of the testimony and evidence presented, this Board finds that the subject request does not adversely affect the public health, safety, security, morals, or general welfare, nor does it result in dangerous traffic conditions, or jeopardize the life and property of neighborhood residents. Accordingly, for the reasons set forth herein, this appeal is hereby GRANTED by a vote of 5–0.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: May 24, 2018