

**BOARD OF APPEALS**

**July 11, 2018**

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

**AGENDA**

**DOCKET NO. AP2018-017:** An appeal made by Thomas Bennett & Hunter, Inc. for a special exception to use and occupy the property as a “Ready-Mix Cement Concrete Mixing Plant” on property owned by Hagerstown Wash Co Ind Found Inc. and located at 11661 Hopewell Road, Hagerstown, zoned Highway Interchange – **GRANTED**

**DOCKET NO. AP2018-018:** An appeal made by Trammell Crow Company for a variance from required off-street parking spaces of 944 to 587 for a proposed distribution facility on property owned by Perini Industrial Land LLC and located at 13905 Crayton Boulevard, Hagerstown, zoned Highway Interchange – **GRANTED**

**DOCKET NO. AP2018-019:** An appeal made by Kelly Drosdak for a special exception to establish a banquet/reception facility and a variance from the minimum 50-ft front yard setback to 0-ft, variance from the paved parking requirement of 3400 sq. ft. and a variance from required 105 parking spaces to 63 spaces on property owned by Kelly Drosdak and located at 5607 Mount Carmel Church Road, Keedysville, zoned Preservation – **GRANTED WITH CONDITIONS**

\*\*\*\*\*

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 July 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, Chairman  
Board of Zoning Appeals

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

**THOMAS, BENNETT & HUNTER,  
INC  
Applicant**

**Appeal No. AP2018-017**

**OPINION**

This appeal is a request for a special exception to establish a “ready-mix cement concrete mixing plant at the subject property which is located at 11661 Hopewell Road, Hagerstown, Maryland 21740; is owned by Hagerstown-Washington County Industrial Foundation, Inc.; and is zoned Industrial General. The Board held a public hearing on the matter on July 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. Applicant has operated its ready-mix cement concrete mixing plant at the current location on Burhans Boulevard in Hagerstown, Maryland since 1939.
2. The subject property is approximately 19.37 acres of unimproved ground located between the Purina Mills property and the Freightliner property on Hopewell Road. It is located in the area identified as the “Hopewell Valley” targeted economic development area by the 2002 Washington County Comprehensive Plan.
3. The proposed project is to construct a small single-story office/shop building, a large ready-mix cement concrete plant, a back-up portable plant and outdoor stockpiles. There will be approximately 20-25 employees on-site and the plant would operate from 6:00 a.m. to 6:00 p.m. during the week and 6:00 a.m. to noon on Saturdays.
4. The west side of the subject property contains a forest conservation area, which is located between the Freightliner property and the proposed plant site. There is a residence located on the Freightliner property, towards the eastern boundary line.

5. There was no opposition presented to Applicant's request.

### **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 the instant case, the Board is called upon to consider a request to establish a ready-mix cement concrete mixing plant and also to relieve Applicant of specific setback requirements particular to such uses, pursuant to Section 14.2 of the Zoning Ordinance.

The proposed use is a permitted special exception use in this zone, and one that is consistent with the uses on directly adjacent and neighboring properties. It is also highly consistent with the elements of the Comprehensive Plan, which identifies the area as a targeted economic development area. The relocation of businesses to this area furthers the intent and purpose of the Comprehensive Plan. The area has been developed largely by manufacturing and warehouse uses and the proposed use is both consistent and an appropriate fit among the other uses.

There is nothing unique about the subject property or the surrounding properties that would produce more adverse effects at this location as opposed to somewhere else in the zone. The subject property is located near a highway interchange where significant truck traffic already exists due to the existing uses, the property has a forest conservation buffer on the only side with any residential connection, and the noise, dust and other environmental cast-offs from the proposed use are no more than other uses in the immediate area. In short, the construction of a ready-mix cement concrete mixing plant 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). The special exception request is GRANTED, by a vote of 5-0.

As part of the special exception consideration, Section 14.2 of the Ordinance requires that a 1,000 foot setback should be maintained from any contiguous residential property. The Ordinance further permits the Board to determine whether such a setback is necessary, and specifically permits a setback as minimal as 25 feet for ready-mix concrete cement plants. Here, Applicant seeks to reduce the setback to 100 feet which is

consistent with the setback requirement in the Industrial General zoning district generally. This appears to be a reasonable request, designed to provide appropriate setback space while also relieving the burden of the full setback imposed by the Ordinance. The fact that the adjacent “residential use” is ancillary to a commercial truck operation on property zoned Highway Interchange, also supports the reasonableness of such a reduction in the setback requirements. The Board finds that is not necessary to impose the full 1,000 setback requirement and further finds that the proposed setback of 100 feet is both reasonable and appropriate under the circumstances.

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

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: August 1, 2018

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

**TRAMMELL CROW COMPANY  
Appellant**

**Appeal No. AP2018-018**

**OPINION**

This appeal is a request for a variance to reduce the off-street parking requirements from 944 spaces to 587 spaces for a proposed distribution facility at the subject property. The subject property is located at 13905 Crayton Blvd, Hagerstown, Maryland 21742; is owned by Perini Industrial Land, LLC; and is zoned Highway Interchange. The Board held a public hearing on the matter on July 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. Appellant is the contract purchaser and developer of the subject property, located at 13905 Crayton Blvd, Hagerstown, Maryland and owned by Perini Industrial Land, LLC.
2. Appellant proposes to develop a +/- 1,190,700 square foot distribution facility upon successful subdivision creating the subject property. The proposed use would be for warehousing, storage and distribution and would include truck loading and unloading.
3. There is no identified tenant yet, but Appellant is proceeding with the project in order to have the subject property move-in ready for an end user. It is estimated there would be approximately 100 employees.
4. The Zoning Ordinance was modified in 2010 to impose additional parking requirements, which in the case of the proposed project, require 944 parking spaces at

the subject property.

5. The most important part of the area outside of the facility are the loading areas and trailer drop areas, because they require adequate room for large trucks to maneuver in and out of the property.

### **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, based on the gross floor area and the office floor area, the subject property is required to have 944 off-street parking spaces.

“‘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).) In this case, it is the application of the particular Ordinance requirements that render the property unique. Unlike other similar uses, this use would be the first to have the more restrictive parking requirements imposed upon it following changes to the Ordinance in 2010. The imposition of these requirements prohibits reasonable and meaningful development of the subject property, which is a characteristic unique to this

---

\* “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).

property and proposed use. There are other similar uses whose parking would be considered woefully inadequate under the revised parking requirements, to include Staples (280 spaces) and Home Depot (330 spaces). The effect on the subject property is significantly disproportionate and not reasonably related to the purpose and intent of the Ordinance.

The Applicant has demonstrated a practical difficulty if variance relief is not granted. Appellant is seeking to reduce the number of required parking spaces from 944 to 587. Given that there will be approximately 100 employees and that the use is intended to be for warehousing and distribution, even the reduced number sounds excessive. It is vital to the operation that trucks be able to navigate loading areas and trailer drop areas which will occupy significant exterior space. In order to comply with the Ordinance requirements, Appellant would either need to reduce those vital areas or increase considerably, the paved surface area surrounding the facility. The former creates the likelihood for reduce efficiency and productivity from the intended use and the latter is environmentally irresponsible. In sum, 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 it is overwhelmingly likely that most of the parking area will not be utilized. 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: August 1, 2018

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

**KELLY DROSDAK  
Appellant**

**Appeal No. AP2018-019**

**OPINION**

This appeal is a request for a special exception to establish a banquet/reception facility, and for variances from the minimum 50 foot front yard setback to 0 feet, variance from the paved parking requirement of 3,400 and a variance to reduce the required parking spaces from 105 to 63 spaces. The subject property is located at 5607 Mount Carmel Church Road, Keedysville, Maryland; is owned by the Appellant; and is located in the Preservation District. The Board held a public hearing on the matter on July 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. Appellant proposes the establish banquet/reception facility for events at the subject property which is located in the Preservation District. Appellant inherited the property in 2017 and it has been in her family since 1972.
2. Appellant proposes to utilize an existing barn structure and outdoor space for weddings, parties and other planned events. The barn structure was constructed in 1857 and is in need of repair and restoration. Appellant is in the process of undertaking the restoration work, regardless of the outcome of this case.
3. Appellant intends to operate the facility from April 1<sup>st</sup> to October 31<sup>st</sup> each year and will be open Tuesday through Sunday, from 9:30 a.m. to 10:30 p.m. There will be no employees at the facility; all services will be provided by outside vendors. Appellant will utilize portable toilets for events. Vehicle parking would be in grassy areas with the only impervious areas reserved for walkways.
4. Appellant has self-imposed a maximum capacity of 125 guests for an



event.

5. Appellant and her husband plan to move into and reside at the subject property.

**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. The specific concerns raised about this proposed use centered on traffic along Mount Carmel Road and noise pollution onto neighboring properties. Appellant presented evidence from a sound study that concluded that projected sound levels from events were within reasonable limits and would not adversely affect or pollute neighboring properties. There was testimony that the traffic counts on Mount Carmel Road average approximately 170 cars per day. The road itself is a low volume country road which typically experiences only destination traffic. While there was concern for increased traffic, it appears to be mitigated by the limitation on hours of operation, seasonal nature of the use and the fact that not all vehicles will be coming and going at one time. Appellant has self-imposed a maximum capacity to control any perceived adverse effects from the intended use. Noise and traffic are common concerns for banquet and reception facilities and Appellant has addressed them such that the facility will not 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).

Accordingly, the special exception request is GRANTED, by a vote of 4-1, with the following conditions:

1. The proposed use is limited to operation from April 1 to October 31 each year;
2. The proposed use shall operate from Tuesday to Sunday and shall maintain hours of 9:30 a.m. until 10:30 p.m.; and

3. The proposed use shall not exceed 125 guests for an event.

### *The Variance*

This Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56. <sup>1</sup> “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, Appellant requests variances from the Ordinance for the front yard setback, paved parking requirements and the number of parking spaces.

Pursuant to Article 5C.6 of the Ordinance, the required front yard setback for the subject property is 50 feet. The barn on the subject property is approximately 22 feet from the center line of Mount Carmel Church Road and approximately 7 feet from the roadbed itself. The barn was constructed in 1857, well before the Ordinance existed and thus before there were any setback requirements. To conform with the setback requirements, Appellant would have to move the barn from its current location. This is unduly burdensome and would impose an extreme hardship on Appellant.

Pursuant to Article 22.12(f)(10)(iv), the proposed use requires 3,400 square feet of paved parking area. If Appellant were to comply with this requirement, there would be a large impervious surface which is only in use for approximately one-half of the year. This surface would have a detrimental effect on stormwater and surface water runoff and disrupt the natural landscape and environment. Maintaining a grass parking area without paved surfaces is more consistent with the intended preservation of the rural characteristics of the property and furthers the intent of the Preservation District. Requiring strict compliance with the paved parking requirements imposes practical difficulty on Appellant.

---

<sup>1</sup> “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).

Pursuant to Article 22.12(b)(1) of the Ordinance, the proposed use requires one (1) parking space per 50 square feet of the facility. The aggregate square footage of the barn and outdoor space is approximately 5,249 square feet, which would require 105 parking spaces. However, Appellant reasonably figures two (2) guests per vehicle based on the nature of the venue being used mostly for wedding events. This coupled with the self-imposed maximum capacity of 125 guests, reduces the number of spaces needed to 63 parking spaces. Strict imposition of the Ordinance requirements would result in a designated parking area that is almost twice as large for a seasonal operation that is intended to blend in with the rural nature of the surrounding properties. This is the very definition of practical difficulty and to impose such requirements is to assert form over substance and consistency with the intent of the Ordinance.

Accordingly, the variance requests are both GRANTED, by a 5-0 vote. The setback variance is granted for the actual distance the barn is from the roadway which per the testimony was +/- 7 feet.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: August 1, 2018