

BOARD OF APPEALS

August 8, 2018

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

AGENDA

DOCKET NO. AP2018-020: An appeal made by 632 Joint Venture LLP for a variance from 25 ft. from street right of way to 10 ft. for the placement of a freestanding sign and variance to allow sign to face a residential district on property owned by the Appellant and located at 10715 Downsville Pike, Hagerstown, zoned Highway Interchange- **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 July 30, 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**

632 JOINT VENTURE, LLP

Appeal No. AP2018-020

Appellant

OPINION

This appeal is a request for a variance to reduce the setback for a freestanding sign and to allow the sign to face a residential district at the subject property. The subject property is located at 10715 Downsville Pike, Hagerstown, Maryland 21740; is owned by 632 Joint Venture, LLP; and is zoned Highway Interchange. The Board held a public hearing on the matter on August 8, 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 owner of the subject property, located at 10715 Downsville Pike, Hagerstown, Maryland. The subject property is currently comprised of a large office building that houses Heath@Work, a law office and a dental office.
2. Appellant proposes to construct a 6' by 20' freestanding sign at the front of the property, which will bear the various businesses and tenants within the building. The sign will have exterior lighting and will not be lit from within.

3. The existing right-of-way along Downsville Pike extends 80 feet beyond the curb.
4. The building sits atop a slight hill as the property increases in elevation from the road back to the structures and parking lot area.
5. The properties directly across the street from the subject property are part of a residential zoning district. While not contiguous with the subject property in the technical sense, they are separated only by Downsville Pike. A Sheetz convenience store is located on property immediately to the west of the subject property, which has a large, elevated sign along Downsville Pike.
6. There was no opposition presented to this 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

* “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).

variance would observe the spirit of the Ordinance and secure public safety and welfare. § 25.56(A). In the instant case, the applicable setback requirement is 25' for a freestanding sign, pursuant to § 22.23 of the Ordinance. Appellant seeks to reduce the setback to 10' in order to locate the sign closer to the road.

“‘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, two unique characteristics are working against Appellant. First, the property slopes from the road up and back to the existing building and parking lot. The effect is that the building is elevated from the road but in a way that the parking lot obscures some of its elevation. Second, there is an existing 80’ right-of-way for Downsville Pike in front of the subject property. Not only are the building and parking lot elevated, but they are significantly set back from the road because of the right-of-way. This is an extremely large right-of-way, and much more than most properties must contend with when considering setbacks along road frontage, making the subject property unique.

The Applicant has demonstrated a practical difficulty if variance relief is not granted. While the sign could be constructed without the requested variance relief, the result would be a freestanding sign facing east and west along Downsville Pike, that is

tucked close to the elevated parking lot, approximately 96' feet from the roadway. The existence of the unnecessarily large right-of-way imposes an undue burden and practical difficulty upon Appellant. The sign is intended to alert visitors and passing motorists of the businesses contained within the property. If it is located per the Ordinance, it will be almost 100' from cars passing by and will be turned, making it difficult to read. Appellant simply seeks to bring it closer to the road and face it towards the road so that it is easy to see and read. To do so makes practical sense for the use of the property and avoids an unfair and unproductive imposition of the strict setback requirements in the Ordinance. 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 variances to reduce the setback for a freestanding sign to 10' and to permit the sign to face a residential district are hereby GRANTED by a vote of 5-0.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: August 13, 2018