

BOARD OF APPEALS

August 22, 2018

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

AGENDA

DOCKET NO. AP2018-021: An appeal made by Maugansville Mennonite Church for a variance from 25 ft. from street right of way to 6 ft. for the placement of a freestanding sign on property owned by the Appellant and located at 13434/13436 Maugansville Road, Hagerstown, zoned Residential Transition - **GRANTED**

DOCKET NO. AP2018-022: An appeal made by Fuego Fresco del Espirito Santo for a special exception to establish a church and variance from minimum 18 ft. access lane to 12 ft. on property owned by Pascal Enterprises, Inc. and located at 10306 Sharpsburg Pike, Hagerstown, zoned Highway Interchange – **VARIANCE DENIED, DID NOT VOTE ON SPECIAL EXCEPTION**

DOCKET NO. AP2018-023: An appeal made by Kevin Rowe for a special exception to establish a commercial winery, special exception to establish a banquet/reception facility and variance to not require winery/banquet parking on a stable, dust free surface on property owned by Martha B. Willard and located at 24900 Raven Rock Road, Smithsburg, zoned Environmental Conservation – **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 August 13, 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**

**WASH CO., MD & FRANKLIN CO.,
PA, MAUGANSVILLE MENNONITE
HOME**

Appeal No. AP2018-021

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 13434 Maugansville Road, Hagerstown, Maryland 21740; is owned by Wash Co., MD & Franklin Co., PA Maugansville Mennonite Home; and is zoned Residential Transition. The Board held a public hearing on the matter on August 22, 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 13434 Maugansville Road, Hagerstown, Maryland. The subject property is currently comprised the existing senior living home and the newly constructed senior living home, which share a common driveway.

2. Appellant proposes to construct a 12' by 2' freestanding, ground mounted sign at the front of the property, along Maugansville Road.

3. The proposed location of the sign will not block sight lines for vehicles exiting the property.

4. When travelling on Maugansville Road from Maugansville, it is difficult to see a sign unless it is out along the roadway.

5. 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 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 6' to locate the sign closer to the road.

* “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).

“‘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, there are two (2) facilities located on shared property, with a common driveway. To control traffic, another driveway is used as an exit only, ensuring safe travel in and out of the property. The facilities are set back a considerable distance from the road and although the topography is seemingly flat, the roadway curves both before and after the property, causing a line of sight issue for the property.

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 back away from the roadway, and not easily visible to vehicle traffic. This would add to the confusion with both facilities occupying the same property and utilizing a shared entrance. The primary purpose of the sign is to announce the presence of the new facility and ensure that visitors can locate the entrance without having to turn around. Appellant simply seeks to bring it closer to 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 a variance to reduce the setback for a freestanding sign to 6' is hereby GRANTED by a vote of 5-0.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: September 12, 2018

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

**FUEGO FRESCO DEL ESPIRITO SANTO
Applicant**

Appeal No. AP2018-022

OPINION

This appeal is a request for a special exception to establish a church and a variance to reduce the minimum width of an access lane from 18 feet to 12 feet at the subject property which is located at 10306 Sharpsburg Pike, Hagerstown, Maryland 21740; is owned by Pascal Enterprises, Inc.; and is zoned Highway Interchange. The Board held a public hearing on the matter on August 22, 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's church was first established in Hagerstown, in 2010 and has been renting space from other churches to conduct services and worship.
2. Appellant has contracted to purchase/rent the subject property located at 10306 Sharpsburg Pike, Hagerstown, Maryland. The property is comprised of a two-story structure that was once a residence and then converted into retail space, a small asphalt parking area in the front and a larger asphalt parking area in the rear of the building, accessible by a 12' lane running along the south side of the property.
3. The proposed church would conduct services on Saturday evening, Sunday morning, as well as bible study and instruction on Tuesday and Wednesday evenings. It is expected that 60-80 people would attend on Saturdays, 50 people on Sundays and less than 20 people during the weekdays.

4. The property has fourteen (14) off-street parking spaces according to the site plan.
5. The access lane to the rear parking lot runs right along the property line and there is no room to expand without altering the building.
6. There was no opposition presented to Applicant's request.

Rationale

In this case, the special exception request is dependent upon the approval of off-street parking which is only possible if Appellant's variance request is granted for the access lane to the parking lot. We must consider the variance request first given its necessity for the special exception application.

Variance Request

This Board has authority to grant a variance 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). In the instant case, Appellants seek to establish a church in a former residence and retail

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building along Sharpsburg Pike in Hagerstown, Maryland. Their special exception request to establish a church depends on their ability to allow parking on the property. Said parking is possible by utilizing a 12' access lane along the side of the building to the rear where the parking area is located.

“‘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).) The subject property is constrained by the property lines and the existing structure located thereupon. There is no way to expand the access lane without acquiring rights over additional property or destroying the building. While we sympathize with this difficult situation, Appellant has not produced any evidence of uniqueness regarding the subject property. The property can clearly be utilized for several uses without having to deal with the smaller access lane to the rear parking area. Moreover, the practical difficulty lies not with the size of the access lane, but with the notion of establishing a church on such a small property. Appellant created their own practical difficulty by choosing to establish and locate a church, which has very specific off-street parking requirements, on a woefully small property with problematic access to the rear parking lot. For all these reasons, the Board finds there is insufficient evidence to establish uniqueness and practical difficulty and the variance request must be denied.

Special Exception Request

Because we are not persuaded that the variance relief should be granted, it is

unnecessary for us to reach the issue of the special exception as it was dependent on the reduction in minimum access width to the parking lot. The special exception to establish a church is moot.

The request for a variance to reduce the minimum width of the access lane from 18' to 12' is hereby DENIED by a vote of 5-0.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: September 12, 2018

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

KEVIN ROWE
Appellant

APPEAL NO.: AP2018-023

OPINION

This appeal is a request for a special exception to establish a commercial winery, 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 24900 Raven Rock Road, Smithsburg, Maryland 21783; is owned by Martha B. Willard; and is zoned Environmental Conservation. The Board held a public hearing on the matter on August 22, 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 commercial winery and banquet/reception facility on the subject property.
2. The subject property is currently operated as a farm. It is comprised of 143 acres containing several buildings and structures. Appellant will utilize 2 existing structures for banquet and reception events, a 3,400 square foot building and 3,000 square foot building. Appellant will use another 4,000 square foot building for the winery and

tasting room. There will also be outdoor seating and gathering areas to allow for exterior congregation and event planning.

3. Appellant has a contract to purchase the subject property, conditioned upon approval of necessary zoning and other permits. Appellant has permission from the owner to pursue this appeal.

4. Appellant plans to plant and grow grapes for production, but will operate as a commercial winery, processing grapes and other fruit brought in from supplier farms in the beginning. However, Appellant does not expect the winery to be open to the public for approximately 3 to 5 years.

5. Appellant plans to host weddings and events at the property which would be the primary use while a test vineyard is growing.

6. Appellant plans to operate the reception and event facility Sunday through Thursday from 9:00 a.m. to 9:00 p.m. and Friday and Saturdays from 9:00 a.m. to 11:30 p.m. Appellant plans to operate the winery and tasting room Wednesday through Sunday with varying hours. On Wednesdays and Thursdays, the facility would be open from 2:00 p.m. to 7:00 p.m., Friday 4:00 p.m. to 9:00 p.m., Saturday 11:00 a.m. to 7:00 p.m., and Sunday 12:00 p.m. to 7:00 p.m.

7. Appellant anticipates 2 to 3 events per week with a maximum capacity of 550 individuals, including catering staff, at any given time at the property. All food will be brought from off-site caterers.

8. The subject property sits down in a slight valley and contains a buffer of vegetation for neighboring properties. The nearest residence is over 1,000 feet away and is separated by dense trees.

9. The sight distance along Raven Rock Road is approximately 2 to 3 times the necessary sight lines for traffic exiting the property. The average daily trips along Raven

Rock Road at the subject property are 2, 251 and the road is more than adequate to accommodate additional traffic associated with the proposed use.

10. Sound generated by the subject property is at acceptable levels in accordance with state law and regulation.

11. Appellant intends to designate a large area for parking to include some paved parking spaces namely for handicapped spaces, as well as grass and stone parking.

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 uses are permitted special exception use in this zone and are uses that have been adopted in other areas in the county, including a winery located very close to the subject property. Appellant testified that because the property is not actively growing fruit for wine production, and likely will not be for the first few years, he can only operate as a commercial winery. He expects that once vineyards begin to yield fruit, production will be based on what is grown on the property rather than having the fruit transported in to make wine. Appellant’s concept for the reception and banquet facility is very similar to other established operations in Washington County. The existing structures on the property will be used to host weddings and events and provide areas to congregate for wine tastings and promotional events for the winery.

The property is well suited for such a use as it sits down slightly from neighboring properties, has a plethora of vegetation for natural buffer and it is easily accessible from a main county roadway. While some concerns were raised regarding speed control and accidents, there is no evidence that additional traffic created by the periodic events hosted at the property will have a negative impact on the surrounding area. Likewise, the proposed use will not emit any dust, gas, odor, or light that would have a detrimental impact on surrounding properties. The events will produce noise, particularly weddings where music is played; however, Appellant conducted testing on the property which concluded that sound emission is at acceptable levels from the event locations. In sum, the surrounding properties may hear sound emanating from the property during events, but it won't be any more than might be heard from a principally permitted use on this property, or any other property in the zoning district.

Several neighbors opposed Appellant's request, citing effects on the water table, traffic and the prospect that the property will never actually be used as a working vineyard. It is important to note that Appellant has requested independent approval of both special exceptions and while he plans to integrate their operations, he is not obligated to if approved. Much of the opposition can be categorized as issues that will have to be addressed during the site plan approval process. While we recognize that such concerns exist, we are not persuaded that the proposed uses 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 exceptions are both GRANTED by a vote of 5-0. The special exceptions are granted subject to the condition that events are concluded by 11:00 p.m.

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. 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 Appellant 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).

Section 22.12(f)iv requires that, “All off-street parking facilities shall be designed with a stable, dust-free surface conforming to the standards of the Department of Land Development Engineering.” Appellant is requesting that this requirement be waived based on the size and nature of the use proposed. There are several bodies of water on the subject property and an elevated topography that will result in significant water runoff. Paving or other materials used to create a dust-free surface would likely have a detrimental effect on runoff and contamination of existing water sources. In addition, any such modification of the property to create parking areas would disrupt the existing topography and could cause further harm to surrounding properties. Appellant has proposed the least disruptive approach to the property and one that is least likely to cause damage or problems to the subject property or neighboring properties. Furthermore, the requirement to create such a large dust-free, stable parking area would be unduly burdensome on Appellant. He is trying to expand an existing agricultural use while at

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the same time retain the original nature of the property; carving out and developing a parking area that is likely to be more impervious than the ground itself, is counterintuitive. We find that imposing the strict mandates of the Ordinance creates both practical difficulty and undue hardship for Appellant.

Accordingly, the variance request to waive the requirement for a stable, dust-free surface is GRANTED, by a 5-0 vote.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: September 19, 2018