

BOARD OF APPEALS

November 28, 2018

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

AGENDA

DOCKET NO. AP2018-030: An appeal made by Brooks & Katie Long/Deliteful Dairy LLC for a variance from requirement to provide a durable dustless surface for parking area associated with Deliteful Dairy on property owned by the Appellant and located at 16230 Long Delite Lane, Williamsport, zoned Agricultural (Rural) - **GRANTED**

DOCKET NO. AP2018-031: An appeal made by Hagerstown Canteen Services, Inc. for a variance from minimum 75 ft. setback to 31 ft. rear yard and 23 ft. right side yard for construction of an accessory structure on property owned by the Appellant and located at 10500 Governor Lane Boulevard, Williamsport, zoned Planned Industrial - **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 November 19, 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**

**BROOKS AND KATIE LONG/
DELITEFUL DAIRY, LLC**

Appeal No. AP2018-030

Appellant

OPINION

This appeal is a request for a variance from the requirement to provide a durable dustless surface for parking area associated with the dairy operations at the subject property. The subject property is located at 16328 Long Delite Lane, Williamsport, Maryland 21795; is owned by Brooks and Katie Long; and is zoned Agricultural (Rural). The Board held a public hearing on the matter on November 28, 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. Appellants are the owners of the subject property, located at 16328 Long Delite Lane, Williamsport, Maryland, where they maintain a family-operated dairy farm.
2. Appellants propose to construct a milk processing plant and retail facility for milk and dairy products at the subject property. The entrance to the building will be accessed from the farm lane and will contain 1,500 square feet which is dedicated to the

retail area for sales to customers. It is anticipated there will be 12 total parking spaces, with 10 regular spaces and 2 spaces for handicapped access.

3. Appellants are in the process of applying to become an Agricultural Preservation Farm.

4. The proposed hours of operation for the business would be Monday through Saturday 10:00 a.m. to 8:00 p.m. and the business would be open year-round.

5. Appellants propose to lay gravel for the parking lot area, using the same or similar stone as is used for the farm lane. Pavers will be installed for the handicapped spaces.

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 variance would observe the spirit of the Ordinance and secure public safety and welfare. § 25.56(A).

* “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).

In the case at bar, Appellants seek to avoid the requirement for a paved parking surface which is otherwise required by Section 22.12(f)(10)(iv) of the Zoning Ordinance. The subject property is a farm served by a gravel lane which would feed to the entrance of the proposed building. Having to pave the parking lot area would not only be inconsistent with the existing surfaces, it would likely create a water runoff issue that the property does not currently experience. Moreover, the Maryland Department of the Environment disfavors the use of impervious surfaces for parking, particularly in agricultural areas. The requirement for paving of the parking area would also be inconsistent with the agricultural atmosphere they are attempting to create with their business. Such a requirement creates a practical difficulty and is not consistent with the intent, spirit or atmosphere of agricultural preservation areas. Furthermore, the cost associated with paving would be excessive, and constitutes an undue burden upon Appellants. 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 from the requirement to provide a durable dustless surface for parking area associated with the dairy operations at the subject property is hereby GRANTED by a vote of 4-0.[†]

BOARD OF APPEALS

By: Michael Zampelli, Co-Chair

Date Issued: December 11, 2018

[†] Chairman Fulk abstained from the consideration of this case as well as the vote.

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

**HAGERSTOWN CANTEEN SERVICES,
INC.**

Appeal No. AP2018-031

Appellant

OPINION

This appeal is a request for a variance to reduce the rear yard setback from 75 feet to 31 feet and the side yard setback from 75 feet to 23 feet at the subject property. The subject property is located at 10500 Governor Lane Boulevard, Williamsport, Maryland 21795; is owned by Hagerstown Canteen Services, Inc.; and is zoned Planned Industrial. The Board held a public hearing on the matter on November 28, 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 10500 Governor Lane Boulevard, Williamsport, Maryland. It is comprised of approximately 3.26 acres of land and 2 of those acres are located within the setback areas.

2. Appellant proposes to construct an accessory building on the subject property which will be used to store equipment and for maintenance of vending

machines.

3. The building will be located as proposed because of topography and rock issues to the front of the property, and drainage issues near the existing buildings.

4. Appellant is in the process of acquiring a 50' strip of land owned by CHIEF, which has agreed to quitclaim to Appellant.

5. This proposal was the subject of a prior appeal before this Board seeking rear and side yard variance relief in Case No. AP2017-050. The decision was issued on January 12, 2018, in which the Board granted variances reducing the rear yard from 75 feet to 20 feet, and the side yard from 75 feet to 48 feet. The Board adopted the decision in AP2017-050 into its consideration herein.

6. Following the prior approval of variance relief, Appellant discovered a drainage area between the existing buildings and the proposed building which would have been affected by the previous location of the accessory structure.

7. 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)

* "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).

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 front yard setback requirement is 10' from a Major Collector such as Military Road, and the minimum lot area is 20,000 square feet. Appellant seeks to reduce both given the location of the dwellings and the need to create an interior lot line dividing the properties.

“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, the subject property was determined to be unique in the prior case before this Board and there have been no material changes. It is clear from the topography and rock issues that the rear portion of the property is the only location for the proposed accessory structure. In addition, there is the newly discovered drainage issue which has mandated Appellant’s return for the relief requested herein.

The Appellant has demonstrated a practical difficulty if variance relief is not granted. Appellant’s use of the property would be frustrated with little, if any benefit from imposition of the setback requirements. The proposed accessory structure will permit Appellant to move its off-site storage back on-site thereby securing equipment and improving service efficiency. With the addition of the CHIEF lands, the encroachment of the accessory structure is minimal, while affording a practical use of the

property. Moreover, the slight relaxation of the setback requirements affords Appellant the necessary relief without requiring the re-engineering of drainage and water runoff for the whole site. 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 rear yard setback from 75 feet to 31 feet, and to reduce the side yard setback requirement from 75 feet to 23 feet is hereby GRANTED by a vote of 5-0.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: December 11, 2018