

BOARD OF APPEALS

February 6, 2019

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

AGENDA

DOCKET NO. AP2019-001: An appeal made by Michael A. & Kelli L. Byers for a special exception to allow a second dwelling on a parcel currently improved with a dwelling and variance from density requirement of 1 dwelling until per 20 acres to 1 dwelling unit per 2 acres for second dwelling on property owned by the Appellant and located at 14922 Falling Waters Road, Williamsport, zoned Environmental Conservation – **GRANTED WITH CONDITION**

DOCKET NO. AP2019-002: An appeal made by Bower Avenue Properties LLC/Bluegrass Commercial, LLC, and New Direction Utilities, Inc. for a special exception to establish a contractor’s equipment and storage yard on property owned by the Appellant and located at 20335 Leitersburg Pike, Hagerstown, zoned Agricultural (Rural) - **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 January 28, 2019. 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**

MICHAEL AND KELLI BYERS

Appeal No. AP2019-001

Appellant

OPINION

This appeal is a request for a special exception to allow a second dwelling on a parcel currently improved with a dwelling, and for a variance to reduce the density requirement of one (1) dwelling unit per twenty (20) acres to one (1) dwelling unit per two (2) acres for a second dwelling. The subject property is located at 14922 Falling Waters Road, Williamsport, Maryland 21795; is owned by Michael Byers and Kelli Byers; and is zoned Environmental Conservation (EC). The Board held a public hearing on the matter on February 6, 2019.

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 purchased the subject property in 2003 and subsequently finished construction on the residence, pool and pool house in 2005. The pool house is located on the opposite side of the in-ground pool from the main residence and was intended for storage and convenience for guests using the pool and outdoor facilities at

the home.

2. The pool house structure has electric and water service which is connected to the main residence. There are no separate meters or connections for electric, water or sewer.

3. In 2014, Michael Byers was diagnosed with liver disease. His current medical situation requires frequent medical appointments and he is unable to be the full-time caretaker of the home. Mr. Byers' diagnosis required that he have family close by to assist with appointments, tending to the home and for general support and assistance.

4. Mrs. Byers provides regular daycare each week for their grandchildren.

5. Appellants daughter and son-in-law and two (2) young children are already residing in the main residence. There would be no increase in traffic to the property or a noticeable change in how the property is used.

6. The conversion of the pool house into a residence would be for Appellants to move into once complete.

7. There was no opposition to the relief requested in this case.

Rationale

Appellants have sought both a special exception and variance relief related to the use of their pool house structure as a second dwelling. Because the variance relief is only necessary if a second dwelling is authorized on the subject property, we shall consider the special exception application first.

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. In the instant case, Appellants have applied for a special exception to permit a second dwelling on the subject property which already has a dwelling.

There is nothing 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 pool house is situated close to the main residence and fits naturally among the structures associated with Appellants’ homestead. From the outside, it will not be noticeable that it is being used as a second dwelling. There will be no impact on surrounding properties such as noise, gas, odor, or dust and aside from the construction of a small addition, there will be no changes made to the existing structure. The proposed use will not have “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). For all these reasons, we conclude that this application meets the criteria for a special exception, is consistent with the notion of maintaining the public safety and welfare and upholds the spirit of the Ordinance. Accordingly, the application for a special exception for a second dwelling on property that currently has a dwelling is GRANTED by a vote of 5-0.

Variance

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, Appellant seeks a reduction in the density requirements to allow for the pool house structure to be considered and used as a second dwelling. Pursuant to Section 5B.3, Appellants are required to limit dwelling units to one (1) per every twenty (20) acres.

“‘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 location of the pool house so close to the main residence and the location of the homestead make the property unique.

The Applicant has demonstrated a practical difficulty if variance relief is not granted. The proximity of the pool house to the main residence makes it impossible

* “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).

for Appellants to subdivide and impose a lot line between the two structures. Subdivision would typically be the solution to establishing multiple dwellings on family owned property, however it is untenable here. Appellants cannot physically move the pool house, nor can they afford to tear it down and rebuild in a different location on the property. Moreover, moving the building would defeat the intended purpose of affording them close quarters so that family can assist with care. Appellants only recourse is to reduce the density restrictions to allow for use of the existing buildings as dwellings. For all these reasons, we conclude that the variance relief secures public safety and welfare and upholds the spirit of the Ordinance. The request for a variance to reduce the density requirement to one (1) dwelling unit per two (2) acres is hereby GRANTED by a vote of 5-0. Both the special exception and the variance are granted with the conditions that (1) that the second dwelling not be used as a rental property, and (2) that the use be consistent with the testimony and evidence presented to the Board.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: March 4, 2019

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

**BOWER AVENUE PROPERTIES, LLC/
BLUEGRASS COMMERCIAL, LLC**

Appeal No. AP2019-002

Appellant

OPINION

This appeal is a request for a special exception to establish a contractor's equipment and storage yard. The subject property is located at 20335 Leitersburg Pike, Hagerstown, Maryland 21742; is owned by Appellants; and is zoned Agricultural, Rural A(R). The Board held a public hearing on the matter on February 6, 2019.

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. Applicants own Parcel 709 known as 20331 Leitersburg Pike, Hagerstown, Maryland and Parcel 711 known as 20335 Leitersburg Pike, Hagerstown, Maryland. They are collectively referred to as the subject property herein.
2. Applicants propose to store equipment and materials related to the operation of New Direction Utilities, Inc., which is an electrical and communication systems installation company affiliated with Applicants. New Direction maintains office space across Leitersburg Pike from the subject property.
3. The subject property would be used for the storage of equipment such as

trucks, drilling rigs, generators, derricks and some minor materials. It would also be used as a staging area for employees to meet before heading to various projects. It is expected that operations would occur Monday through Friday from early in the morning until between 4:00 p.m. and 5:00 p.m. in the evening. There are exceptions for jobs that must be performed overnight.

4. Applicant proposes to create a gravel lot for storage of the equipment. There would be no water or electrical connections to the property.

5. Applicant was already storing equipment and some material at the subject property, which prompted the application for a special exception.

6. New Directions has a fleet of approximately seventy-five (75) trucks and other large equipment, however only about fifteen (15) will be stored at the subject property.

7. There was no opposition to the relief requested in this case.

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, Applicants have applied for a special exception to establish a storage and equipment yard for trucks, equipment and materials related to commercial electrical and communications business.

Aside from being able to see trucks and equipment being stored on the subject property, there is no evidence that such a use will have any impact, let alone adverse impact on the surrounding properties. There will only be a small portion of the

company's fleet stored at the property and employees will congregate only at the beginning and end of the workday and will not have a presence during the day or on the weekends. There are no residences in the immediate area and no uses on surrounding properties that would be affected by storage on the subject property. Furthermore, the subject property is buffered by vegetation so as to disguise its operation from multiple sides. The proposed use will not have "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). For all these reasons, we conclude that this application meets the criteria for a special exception, is consistent with the notion of maintaining the public safety and welfare and upholds the spirit of the Ordinance. Accordingly, the application for a special exception to establish a contractor's equipment and storage yard at the subject property is GRANTED by a vote of 5-0. The approval is granted with the condition that the proposed use is consistent with testimony and evidence presented to the Board.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: March 4, 2019