

BOARD OF APPEALS

May 29, 2019

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

AGENDA

DOCKET NO. AP2019-010: An appeal made by Chaz M. & Tiffany M. Younger for a special exception to allow a second dwelling unit on a parcel currently improved with a single family dwelling on property owned by the Appellant and located at 17718 Broadfording Road, Hagerstown, zoned Residential Transition - **GRANTED**

DOCKET NO. AP2019-011: An appeal made by Beaver Creek School LLC for a special exception to establish a banquet/reception facility on property owned by the Appellant and located at 9702 Beaver Creek Church Road, Hagerstown, zoned Rural Village – **GRANTED WITH CONDITIONS**

DOCKET NO. AP2019-012: An appeal made by PennTex Ventures LLC for a variance from required 54 parking spaces to 38; variance from required 10 ft. parking separation from street right of way to 1.5 ft.; variance from 25 ft. from street right of way to 15 ft. for placement of a freestanding sign; variance to allow said sign to face a residential district for proposed retail business on property owned by Williamsport Adventures LLC and located at 17213 Virginia Avenue, Hagerstown, zoned Business Local - **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 May 20, 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**

CHAZ M. AND TIFFANY YOUNGER

Appeal No. AP2019-010

Applicants

OPINION

This appeal is a request for a special exception to establish to allow a second dwelling unit on a parcel currently improved with a single-family dwelling at the subject property. The subject property is located at 17718 Broadfording Road, Hagerstown, Maryland; is owned by Chaz M. Younger and Tiffany Younger (hereinafter “Applicants”); and is zoned Residential Transition (RT). The Board held a public hearing on the matter on May 29, 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 are the owners of the subject property, located at 17718 Broadfording Road, Hagerstown, Maryland. Applicants purchased the subject property in April 2019.

2. The subject property consists of approximately 8.8 acres of land, with a single-family dwelling, and an accessory Morton building which is approximately 31 feet by 59 feet.

3. The subject property has already passed a perc test for septic field behind the existing Morton building.

4. Ms. Younger's mother passed away suddenly on January 31, 2019, leaving her father as a widower and forcing the sale of the couple's dream home in Greencastle, Pennsylvania.

5. Applicants propose to renovate the Morton building to include a one bedroom, one bathroom living space with a small living room, office and kitchen/dining area. The dwellings would share a driveway and there is no intent to establish a separate address unless required by the County.

6. Applicants do not intend to leave the property, having purchases as their "forever home". In the event there comes a time when the second dwelling is not occupied by Ms. Younger's father, they will make use for their own purposes. They do not intend to rent the space.

7. Planning Staff reviewed the application and indicated that the proposed use was consistent with Comprehensive Plan.

8. There was no opposition presented to the application.

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 special exception request to allow a second dwelling unit on a parcel

currently improved with a single-family dwelling pursuant to Section 4.5 and Section 7A.0 of the Zoning Ordinance. The latter providing, “the purpose of the Residential Transition District is to provide appropriate locations for single-family and two-family residential development in Urban and Town Growth Areas.”

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. Aside from possibly having a separate address number for emergency services, there will be no visible changes to the use of the property from its current status. The fact that the building already exists on the property is a compelling reason for finding no external or adverse effects of such a use. Moreover, Applicants have provided assurances that the proposed use will not be used as a rental property in the future. The Board finds that the proposed use 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). For all these reasons, we conclude that this appeal meets the criteria for a special exception and secures public safety and welfare and upholds the spirit of the Ordinance.

Accordingly, the request for a special exception to establish a retail sales facility at the subject property is hereby GRANTED, by a vote of 5-0. The application is granted upon the condition that the proposed use be consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: June 26, 2019

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

BEAVER CREEK SCHOOL, LLC

Appeal No. AP2019-011

Applicants

OPINION

This appeal is a request for a special exception to establish to establish banquet/reception facilities at the subject property. The subject property is located at 9702 Beaver Creek Church Road, Hagerstown, Maryland; is owned by Beaver Creek School, LLC (hereinafter “Applicant”); and is zoned Rural Village (RV). The Board held a public hearing on the matter on May 29, 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. Applicant is the owner of the subject property, located at 9702 Beaver Creek Church Road, Hagerstown, Maryland.
2. The subject property consists of the original Beaver Creek School building which was last used as a school in 1961. There is also a pavilion on the grounds. Ownership of the property was transferred to the Historical Society in 1971, and in June 2018, Applicant purchased the property to renovate.

3. Applicant has made significant renovations to the building's exterior and interior in order to bring into compliance with County code requirements while at the same time retaining the original character of the building.

4. Applicant proposes to create a location where the general public can reserve space to host small gatherings such as birthdays, family reunions, corporate retreats and board meetings. Applicant will not be engaging in event or party planning.

5. Applicant's intention is to share the history and character of the property with the general public by making it available as small gathering venue.

6. Applicant has indicated that the pavilion will be considered part of the building venue and will not be rented separately.

7. There is no on-site parking at the property, but Applicant intends to utilize parking at nearby St Matthews Church and Beaver Creek Christian Church.

8. Applicant was not opposed to the imposition of a time limit for events.

9. There was no opposition presented to this 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 special exception to establish a banquet/reception facility at the subject property. Such use is identified as requiring a special exception pursuant to Section 3.3 of the Zoning Ordinance. The subject property is located within the Rural Village (RV) zoning district, the purpose of which is to "preserve the unique historic or rural character

of existing villages by encouraging compatible development within a defined village boundary.” See Article 5D, Section 5D.0.

Perhaps the most compelling evidence that a particular use will not have adverse effects on the surrounding properties is the testimony of surrounding property owners in support of the application. In the instant case, there were several neighbors that came before the Board to express their appreciation for the renovation work that has been done at the property and their support for its future use as a banquet/reception facility. Applicant has made great efforts to restore what had been a failing building, which was outdated and unused. Through these efforts and Applicant’s proposed use, a piece of history will not only be preserved, but be on display to the public and to those who wish to incorporate into their planned events. The Board finds that the proposed use 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). For all these reasons, we conclude that this appeal meets the criteria for a special exception, secures public safety and welfare, and upholds the spirit of the Ordinance.

Accordingly, the request for a special exception to establish banquet/reception facilities at the subject property is hereby GRANTED, by a vote of 4–0.¹ The application for special exception is granted upon the condition that events do not exceed 10:00 p.m. Furthermore, the application is granted upon the condition that the proposed use be consistent with the testimony and evidence presented herein.

¹ There was a recusal of one of the board members regarding the consideration and determination of this case.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: June 26, 2019

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

PENNTEx VENTURES, LLC

Appeal No. AP2019-012

Appellant

OPINION

This appeal is a request for a variance to reduce the required parking from 54 spaces to 38 spaces, to reduce the required parking separation from the street right away from 10 feet to 1.5 feet, to reduce the setback from 25 feet to 15 feet for placement of a freestanding sign and a variance to allow the freestanding sign to face a residential district at the subject property. The subject property is located at 17213 Virginia Avenue, Hagerstown, Maryland; is owned by Williamsport Adventures, LLC (hereinafter “Appellant”); and is zoned Business Local (BL). The Board held a public hearing on the matter on May 29, 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. Appellant is the contract-purchaser of the subject property, located at 7213 Virginia Avenue, Hagerstown, Maryland. The subject property is owned by Williamsport Adventures, LLC.
2. Appellant is a real estate development company operating in multiple

states along the east coast and West Virginia and Ohio. Appellant serves as the real estate developer for Dollar General for their new construction, renovation and relocation projects.

3. The subject property is irregularly shaped and bordered to the west by Bower Avenue. The property used to be the site of an old gas station, with open parking lot access all along Bower Avenue. The rear of the site is elevated and is heavily wooded, making it less than ideal for development.

4. The proposed use is a Dollar General store, relocated from its current location on Virginia Avenue.

5. Appellant proposes to construct a mid-size store with 38 parking spaces, a freestanding sign and channelized parking lot that will allow a tractor-trailer to pull in and dock in the loading zone without impeding traffic on Virginia Avenue.

6. Appellant proposes to install the freestanding sign along the roadway, at the corner of the intersection of Bower Avenue and Virginia Avenue.

7. The County is requiring Appellant to dedicate 15 feet of land along Bower Avenue to allow for an access point to the property.

8. There are a number of other businesses which have freestanding signs along Virginia in the surrounding neighborhood, including multiple billboards.

9. There was no opposition presented at the hearing.

Rationale

Variance for Freestanding Sign Facing a Residential District

Appellant has sought a variance to allow the proposed freestanding sign at the corner of Bower Avenue and Virginia Avenue to face the adjacent residential property to

the east and on the opposite side of the subject property. Section 22.23(e) of the Zoning Ordinance authorizes the use of a freestanding sign by businesses, but also provides:

Businesses or industries having a frontage on more than one street may have an additional freestanding sign for each street frontage, provided that the total area for all freestanding signs does not exceed 600 square feet. Where the lot adjoins any lot or lots in a RT, RS, RU, RM or RV District, and a freestanding sign is on the side of the business lot adjoining the residential lot, the sign shall not face the adjoining RT, RS, RU, RM or RV lot.

In this case, the adjoining residential property to the east of the subject property is in the RU district. Appellant was directed to seek this variance as a result of planning staff's interpretation that Section 22.23(e) imposed a restriction on their proposed freestanding sign location. We disagree. As set forth above, the restriction only applies if the sign is on the side of the business lot *adjoining the residential lot*. Appellant has proposed that the sign be at the furthest point from said lot, on the corner of Bower Avenue, and adjoining a lot located in the BL District. Accordingly, the Board finds that Appellant's variance request for a freestanding sign to face a residential district is unnecessary and that the location as proposed, complies with the requirements of the Zoning Ordinance.

Appellant's Other Variance Requests

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

* "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 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).

“‘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 is irregularly shaped and consists of elevation changes that materially impact its development. The irregular shape imposes a limitation on the location of structures while the topography changes in such a small space dictate access and parking.

The Appellant has demonstrated a practical difficulty if variance relief is not granted. Appellant would have to eliminate a significant number of mature trees and a natural buffer to the residential neighborhood to the rear, in order to comply with the parking requirements. The testimony and evidence established that the end user was comfortable with 35 parking spaces for this size store, so requested 38 spaces are more than sufficient for the proposed use. Even with the necessary setbacks proposed due to the Bower Avenue dedication, the site will be developed to channelize traffic and access instead of being open as it has for years. The relocation of this store and proposed site design also allow for trucks to deliver without impeding or negatively affecting traffic on Virginia Avenue. If Appellant were forced to comply with the strict requirements of the

Ordinance, the security, safety and orderly development of this site would be materially affected. The relaxation of the setback requirements affords Appellant the necessary relief and avoids the unreasonable and unfair result of limiting what is otherwise enjoyed by surrounding property owners. 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, the requests for a variances to reduce the required parking from 54 spaces to 38 spaces, to reduce the required parking separation from the street right away from 10 feet to 1.5 feet, and to reduce the setback from 25 feet to 15 feet for placement of a freestanding sign are hereby GRANTED by a vote of 5-0. By a vote of 4-1, the Board has determined that the requested variance related to the freestanding sign facing residential property is unnecessary.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: June 27, 2019