

BOARD OF APPEALS

June 12, 2019

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

AGENDA

DOCKET NO. AP2019-013: An appeal made by Cascade Town Centre Development LLC for a variance from required 3,600 sq. ft. lot area per townhouse to 2,000 sq. ft.; variance from required 100 ft. townhouse lot width to 20 ft.; variance from required 50 ft. setback from any street to 15 ft. for proposed play lot; and variance from required 2.5 spaces per townhome to 2 spaces and to allow 18 on-street visitor/overflow parking spaces for Cascade Town Centre on property owned by the Appellant and located on North Boyd Road, Cascade, zoned Special Economic Development and Preservation - **GRANTED**

DOCKET NO. AP2019-014: An appeal made by Christian Life Chapel for a special exception to establish a place of worship on property owned by Howard C. & Anne H. Wiley and located at 19776 Longmeadow Road, Hagerstown, zoned Business Local - **GRANTED**

DOCKET NO. AP2019-015: An appeal made by Michael Godinez for a variance from required 52 parking spaces to 21 and variance from 25 ft. from street right of way to 10 ft. for placement of freestanding sign for existing business on property owned by Caleb H. Martin and located at 18113 Maugans Avenue, Hagerstown, zoned Highway Interchange – **PARKING VARIANCE GRANTED; REQUEST FOR SIGN VARIANCE WITHDRAWN**

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 June 3, 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**

**CASCADE TOWN CENTRE
DEVELOPMENT, LLC**

Appeal No. AP2019-013

Appellant

OPINION

This appeal is a request for multiple variances to reduce the minimum required lot area to 2,000 square feet, to reduce the minimum required lot width to 20 feet, to reduce the required setback for a play lot to 15 feet and parking variances to permit 2 parking spaces per townhome and 18 on-street parking spaces all at the subject property. The subject property is located at North Boyd Street, Cascade, Maryland; is owned by Cascade Town Centre Development, LLC (hereinafter "Appellant"); and is zoned Special Economic Development (SED) and Preservation (P). The Board held a public hearing on the matter on June 12, 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 owner of the subject property, located at North Boyd Street, Cascade, Maryland.
2. The property currently consists of the existing 33 units of base housing,

built into the mountainside.

3. Appellant proposes to remove the existing units and construct 36 townhouse units, in order to create a cost-effective, working/middle class housing development. There will be a play lot for families to enjoy, on-street additional parking for visitors and guests and improvements made to the roads, sidewalks and means of access throughout the development.

4. The subject property is part of the Fort Ritchie military installation and was once used as base housing.

5. The inclusion of on-street parking for purposes of required parking for units has been approved by the Planning Commission in other, Planned Unit Developments.

6. The typical townhouse lot in Washington County is 20 feet wide and 100 feet long, with a total lot area of 2,000 square feet.

7. A portion of the subject property will be maintained in conservation.

8. The proposed development will not materially impact the schools as Cascade Elementary is currently under capacity.

9. The proposed redevelopment project will result in improvements to sediment control, environmental runoff and repair longstanding sewer issues at the property.

Rationale

This case marks the first time that a development project has been submitted to the County under the Special Economic Development zoning designation and the first time the bulk dimensional requirements and parking requirements of the Zoning

Ordinance have been applied to said zoning designation. The purpose of the SED is to “provide a mixed-use zoning classification which will address land use compatibility associated with the redevelopment and reuse of the Fort Ritchie Military Base.” Section 19C.1. In addition to encouraging optimization of land use potential, the zoning classification “needs to be extremely flexible with regard to bulk and area development requirements since existing development patterns and reuse potential will reflect more of a town or campus character...” Section 19C.1. Appellant’s variance requests herein reflect the need for that flexibility and underscore the difficulty in attempting to apply standard bulk dimensional requirements to such a zoning classification.

There was opposition from neighboring residents presented to the Board during the hearing. One of the consistent themes raised during opposition testimony was the noise and light that would be produced from the proposed redevelopment. Some of the opponents also raised concerns about the traffic and delays in emergency services response times.

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

¹ “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). “‘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 set on the side of the mountain, with steep topography and forestation limiting areas of development. The existing housing units would do not comply with the dimensional requirements now being imposed on the proposed redevelopment. The subject property and surrounding lands that comprise Fort Ritchie were chosen for their characteristics in facilitating an active military installation, not a planned residential development. The topography, existing improvements, environmental encroachments and general layout of the property uniquely affect how the dimensional and parking requirements are applied.

Variance to reduce minimum lot area

Appellant has requested a variance to reduce the minimum lot area from 3,600 square feet to 2,000 square feet per townhouse in order to construct the proposed 36 units. In its presentation to the Board, Appellant noted that the standard townhouse lot in other zoning districts in the County is 20 feet wide by 100 feet long, resulting in a total area of 2,000 square feet. However, the requirements being applied to this property fall under the multi-family dwelling dimensional requirements. Given the proposed construction of townhome units in a campus-type setting, maintaining a larger lot area only serves to reduce the number of units. The Ordinance requirements also impose a significant

practical difficulty in that compliance would require Appellant to reconfigure its site design based on each lot area. The resulting difficulty and hardship are contrary to the stated function and purpose of the SED zoning classification and relaxation of the requirements will allow for the orderly development of the property without conferring any special benefit upon Appellant.

Variance to Reduce Minimum Lot Width

Appellant has requested a variance to reduce the required minimum lot width for a townhouse from 100 feet to 20 feet in order to construct the townhouse units. The analysis on this variance is identical to that of the minimum lot area variance request. According to the testimony, a typical townhouse lot is 20 feet wide, making the Ordinance requirement five times the standard. Once again, the imposition of the lot width requirements conflicts with the stated purpose of the zoning classification. The reduction requested is reasonable when considering other townhouse lots throughout the County, and consistent with the need to be flexible for redevelopment and reuse.

Variance to Reduce Minimum Setback for Play Lot

Appellant has requested a variance to reduce the required setback from 50 feet from a street to 15 feet, for the proposed play lot to be constructed as part of the new development. Given the topography and usable space, it is not realistic to impose a setback of 50 feet. The reduction to 15 feet is significant, but does not sacrifice the safety, security or public welfare in terms of children at play, pedestrian and vehicle traffic.

Parking Variances

Appellant has requested a variance to reduce the number of parking spaces per townhome from 2.5 spaces to 2 spaces and a variance to permit 18 on-street parking spaces for visitors and overflow parking. The proposed layout of the parking plan

actually allows for the town or campus-style design intended for this zoning classification. Each home has practically adequate parking with another on-street space for every 2 homes. Because of the campus-style design and the nature of the roadway, this is likely to be a destination and not a pass-through, and the proposed parking is more than adequate to meet the development's needs.

For the reasons stated above the Board finds that the relaxation of the aforementioned bulk dimensional and parking requirements affords Appellant the necessary relief and avoids the unreasonable and unfair result of limiting what is otherwise a permitted use of the subject property. Therefore, the Board concludes that the granting the various requests for variance relief alleviates the practical difficulty and undue hardship to Appellant, is consistent with the purpose of the Special Economic Development zoning classification, secures public safety and welfare, and upholds the spirit of the Ordinance.

Accordingly, the request for variances to reduce the minimum required lot area from 3,600 feet to 2,000 square feet, to reduce the minimum required lot width from 100 feet to 20 feet, to reduce the required setback for a play lot from 50 feet to 15 feet and parking variances to reduce the minimum required spaces per home from 2.5 spaces to 2 spaces, and to permit 18 on-street parking spaces at the subject property are all hereby GRANTED by a vote of 5-0.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: July 10, 2019

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

CHRISTIAN LIFE CHAPEL

Appeal No. AP2019-014

Applicant

OPINION

This case involves a request for a special exception to establish a place of worship at the subject property located at 19776 Longmeadow Road, Hagerstown, Maryland. The subject property is owned by Howard Wiley and Anne Wiley and is zoned Business Local (BL). The Board held a public hearing on the matter on June 12, 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 conditional lessee of the subject property, located at 19776 Longmeadow Road, Hagerstown, Maryland. Applicants purchased the subject property in April 2019.

2. The subject property consists of an L-shaped retail building which faces Longmeadow Road. Parking is located to the front of the building with approximately 22 spaces available. Applicant proposes to use an 1,800 square foot center portion of the building for its requested use.¹

¹ Referring to the “elbow” portion of the L-shaped building.

3. Applicant currently holds its services in a hotel for a congregation of approximately 55 people.

4. The subject property is currently vacant and unused.

5. Applicant proposes to establish a fixed place of worship at the subject property for a maximum of 80 people. There will be some buildout of the interior space to include classrooms and renovate current open space for Applicant's purposes.

6. Services will be held on Sundays at all times of day, Tuesdays from 7:30 p.m. to 9:00 p.m. and Thursdays from 7:30 to 9:00 p.m. There will be no daytime or office presence for the proposed use. None of the businesses at the subject property will be operating at times when Applicant would be holding services.

7. Any special events such as weddings, will be planned ahead of time in consultation with the other tenants or held offsite.

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 place of worship in a retail shopping building within the Business Local zoning district.

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 activity on Sundays and Tuesday and Thursday nights, 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, the testimony presented at the hearing indicates that Applicant's congregation will be limited to a maximum of 80 people. A place of worship inherently has no gas, odor, dust or additional noise which could adversely impact the surrounding properties. The only real concern for this proposed use is the limited parking available. By limiting the congregation size in accordance with the testimony, Applicant should maintain compliance with the minimum parking requirements for the proposed use. 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 place of worship 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: July 9, 2019

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

MICHAEL GODINEZ

Appeal No. AP2019-015

Appellant

OPINION

This appeal is a request for a variance to reduce the minimum required parking from 52 parking spaces to 21 parking spaces, and a variance to reduce setback for a freestanding sign from 25 feet to 10 feet at the subject property. The subject property is located at 18113 Maugans Avenue, Hagerstown, Maryland; is owned by Caleb Martin; and is zoned Highway Interchange (HI). The Board held a public hearing on the matter on June 12, 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 18113 Maugans Avenue, Hagerstown, Maryland.
2. The property consists of a large industrial/commercial type building and 13 existing parking spaces.
3. Appellant proposes to construct a 4,480 square foot addition to increase the size of the building for three segmented uses. There will be a 2,000 square foot section

for a reptile and aquatics store. There will be a 3,000 square foot section devoted to Appellant's E-commerce garden supply store for inventory storage. The remaining area will be used as a small storefront for the minimal in-store traffic. Appellant also plans to pave the parking area and improve the aesthetics of the property.

4. There will be very little destination traffic to the subject property, with much of the business being conducted online.

5. With the proposed addition to the building, the new site design calls for 21 parking 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. 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). After presenting testimony and evidence but prior to deliberations, Appellant withdrew his variance request related to the setback for a freestanding sign. Thus, the

¹ "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).

Board is left to consider Appellant's lone variance request to reduce the minimum required parking spaces at the subject property.

"'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 has an extremely irregular and definitively unique shape. It is located along a significant curve in the roadway which further limits the site design and location of buildings. Appellant did not construct the building currently on the subject property nor did he cause the strange configuration of the property lines.

The Appellant has demonstrated a practical difficulty if variance relief is not granted. Appellant is correct that under the current Ordinance requirements, he would need 51 parking spaces to comply with the added square footage to the building. Appellant is able to create 21 parking spaces while keeping his expansion design. It is likely that this increase in parking spaces is unnecessary for the expected visitor volumes to the businesses, and thus far exceeds the actual minimum capacity standards.² The relaxation of the setback requirements affords Appellant the necessary relief and avoids the unreasonable and unfair result of limiting what is otherwise a permitted use of the subject property. For all these reasons, we conclude that the grant of variance relief

² The minimum requirements for parking spaces often do not take into consideration actual use of the property. Although Appellant's business and the reptile and aquatics store are permitted uses which were implicitly contemplated when devising the parking requirements, their character as online retail businesses with limited destination customers was clearly not envisioned.

secures public safety and welfare and upholds the spirit of the Ordinance.

Accordingly, the request for a variance to reduce the minimum required parking spaces from 52 spaces to 21 spaces at the subject property is hereby GRANTED by a vote of 4-1.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: July 9, 2019