

BOARD OF APPEALS

June 26, 2019

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

AGENDA

DOCKET NO. AP2019-016: An appeal made by Washington County Department of Water Quality for a special exception for an underground sewage pumping station and associated equipment; variance from 20,000 sq. ft. lot area to 5,868 sq. ft.; lot width from 100 ft. to 60 ft. to create new lot for pump station and variance from 40 ft. front yard setback to 20 ft.; from 25 ft. side yard setbacks to 8 ft on left and right sides; and from 50 ft. rear yard setback to 17 ft. for said pump station and equipment on property owned by Patricia A. McCauley and located on the NE/S of Cearfoss Pike approximately 1 mile SE of Garden View Road, Hagerstown, zoned Residential Transition - **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 no later than June 17, 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**

**WASHINGTON COUNTY DEPT. OF
WATER QUALITY**

Appeal No. AP2019-016

Appellant

OPINION

This case involves a request for a special exception to establish an underground sewage pumping station and associated equipment, as well as variances to reduce the minimum lot area from 20,000 square feet to 5,868 square feet, to reduce the lot width from 100 feet to 60 feet, to reduce the front yard setback from 40 feet to 20 feet, to reduce both side yard setbacks from 25 feet to 8 feet and to reduce the rear yard setback from 50 feet to 17 feet at the subject property located at Northeast corner of parcel 907, tax map 24, Cearfoss Pike, Hagerstown, Maryland. The subject property is owned by Patricia A. McCauley and is zoned Residential Transition (RT). The Board held a public hearing on the matter on June 26, 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 Washington County Department of Water Quality (hereinafter "Appellant") who is the contract purchaser of the subject property, located

at Northeast corner of parcel 907, tax map 24, Cearfoss Pike, Hagerstown, Maryland.

2. The subject property consists of the northeast corner of parcel 907 on tax map 24, which is located within the 100-year flood plain. It is currently unimproved.

3. Appellant proposes to subdivide land to create the subject property and to construct an underground sewage pumping station with associated equipment.

4. There is an existing pumping station which is located within the Maugans Meadows subdivision and for which the proposed station would replace.

5. The proposed pumping station would replace the station at Maugans Meadows, would reduce the costs of services to nearby residents and would divert flow from the City of Hagerstown to the Conococheague Treatment facility.

6. The dimensions proposed for the subject property are consistent with the size and dimensions of other pumping stations throughout the County.

Rationale

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, the Board is called upon to consider a special exception request to allow an underground pumping station on vacant, unimproved land in order to replace an existing pumping station which is located among dense residential development. The pumping station would have little adverse impact on the surrounding properties but great benefit. First, it would improve sewage

pumping in the area, diverting flow to the Conococheague treatment plant rather than the City of Hagerstown. It would remove the existing pumping station from the residential area and create more efficient pumping from the area.

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 an underground sewage pumping station at the subject property is hereby GRANTED, by a vote of 5–0.

Variances

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). “‘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.,

* “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).

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 the instant case, Appellant is seeking to make use of substantially unusable land, but only that portion necessary for its purpose. The dimensional variances requested are designed to give Appellant just enough property to construct and maintain the underground sewage pumping station, while leaving the remaining lands unencumbered to be used by the owner. The proposed size of the subdivided parcel is consistent with many of the other pumping stations in the County, which are small and attempt to efficiently use space to achieve their purpose. To impose the standard dimensional requirements on such a use, which is vital although not defined as essential, would be to frustrate the County’s ability to effectively and efficiently provide necessary services to the citizens. Moreover, the proposed project will result in cost savings to residents and reduce the impact on capacity issues currently experienced by the City of Hagerstown.

For the reasons stated above the Board finds that the relaxation of the bulk dimensional requirements affords Appellant the necessary relief and avoids the unreasonable and unfair result of limiting what is otherwise a use permitted by special exception at 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, secures public safety and welfare, and upholds the spirit of the Ordinance.

Accordingly, the request for variances to reduce the minimum lot area from 20,000 square feet to 5,868 square feet, to reduce the lot width from 100 feet to 60 feet, to reduce the front yard setback from 40 feet to 20 feet, to reduce both side yard setbacks from 25 feet to 8 feet and to reduce the rear yard setback from 50 feet to 17 feet at the subject property located at the subject property are all hereby GRANTED by a vote of 5-0.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: July 24, 2019