

**BOARD OF APPEALS  
NOVEMBER 13, 2019**

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

**AGENDA**

**DOCKET NO. AP2019-021:** An appeal made by Carolyn Kay Hauver for a variance from required 12 ft. right side yard setback to 5 ft. for carport addition to existing garage on property owned by the Appellant and located at 17817 Bluebell Drive, Hagerstown, zoned Residential Transition - **DENIED**

**DOCKET NO. AP2019-022:** An appeal made by PR Valley Limited Partnership for a variance from required 101 parking spaces to 42 for proposed Olive Garden Restaurant lease area on property owned by the Appellant and located at 17410 Valley Mall Road, Hagerstown, zoned Planned Business - **GRANTED**

**DOCKET NO. AP2019-023:** An appeal made by PR Valley Limited Partnership for a variance from required 158 parking spaces to 97 for proposed Golden Corral Restaurant lease area on property owned by the Appellant and located at 17635 Valley Mall Road, Hagerstown, zoned Planned Business - **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 November 4, 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**

**CAROLYN KAY HAUVER**

**Appeal No. AP2019-021**

**Appellant**

**OPINION**

Carolyn Kay Hauver (hereinafter "Appellant") requests a variance to reduce the side yard setback from twelve (12) feet to five (5) feet for a carport addition at the subject property. The subject property is located at 17817 Bluebell Drive, Hagerstown, Maryland 21740; is owned by the Appellant; and is zoned Residential Transition (RT). The Board held a public hearing on the matter on November 13, 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 improved, residential property located at 17817 Bluebell Drive, Hagerstown, Maryland. The property is zoned Residential Transition (RT).
2. The subject property consists of a residence and several outbuildings including a shed, pavilion and large garage, separate from the three-car garage attached to the house. There is a large paved area along the side of the larger garage where Appellant parks her recreational vehicle. Both the front and back yard are designated as

septic reserve area.

3. The subject property is in a subdivision which has recorded covenants and restrictions pertaining to the use of land therein. The covenants and restrictions impose a limit of one (1) accessory or outbuilding per property.

4. Appellant purchased the subject property in 2017 and at the time, the shed, pavilion and large garage all existed on the property. Appellant has not changed the configuration, shape or size of the subject property.

5. There is a slope downward from Appellant's property to her neighbor's property which already produces some water runoff when it rains.

6. Approximately eighteen (18) months ago, Appellant and her next-door neighbor discussed the possibility of an addition to the larger garage on the subject property. This included a discussion of a possible carport over the existing pavement area where Appellant has her recreational vehicle parked.

7. After speaking with personnel at the County Permits office, Appellant was under the impression that she did not need a permit or variance to construct the carport structure.

8. Appellant's carport was constructed and installed by a contractor in early October 2019. At the time, Appellant's neighbor was out of town, but was informed by another neighbor and called the Permits office.

### **Rationale**

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56. <sup>1</sup> "Practical Difficulty" may be found by the

---

<sup>1</sup> "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

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).

Practical difficulty and undue hardship are the result of a property being unique. “‘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 the instant case, the Board is called upon to consider a variance request for a structure that has already been constructed. Put more simply, Appellant asks the Board for forgiveness because the time for permission has come and gone. While the already-constructed status of the project should not sway the Board’s consideration of the variance request, it also should not be used to justify variance relief. In this case, the testimony and evidence clearly demonstrate that Appellant was mistaken in her belief that she did not need any permits. There appears to be no intent to circumvent the mandates of the Ordinance, just a mistake in her understanding after communicating with the County.

---

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).

The Board first notes that Appellant has an attached three (3) car garage, a large garage to the rear of her home and driveway area, now covered by a carport. From this it can easily be concluded that Appellant is making extensive use of the property. Without the variance, Appellant would still be able to park her recreational vehicle in the designated area, but not under a carport structure. Although it may not be what she prefers, conformance to the setback requirements does not prevent the use she intends for this portion of the property and does not make it unnecessary burdensome. Moreover, if Appellant were granted the variance and permitted to keep the carport structure, that would confer a benefit upon her that none of her neighbors have. She already exceeds the maximum number of accessory buildings pursuant to the covenants and restrictions, and the Board cannot allow further deterioration of the restrictions of record, imposed on the property.

The Board finds that Appellant has failed to present evidence of practical difficulty or undue hardship in this case. Appellant did not present any evidence regarding the uniqueness of her property, the hardship created by strict compliance with the setback requirements or how it prevented her from a use that others in the surrounding neighborhood enjoy. Accordingly, by a majority vote of 3-2, the variance request to reduce the side yard setback from twelve (12) feet to five (5) feet for a carport addition at the property known as 17817 Bluebell Drive, Hagerstown, Maryland is DENIED.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: December 3, 2019

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

**PR VALLEY LIMITED PARTNERSHIP**

**Appeal No. AP2019-022**

**Appellant**

**OPINION**

PR Valley Limited Partnership (hereinafter "Appellant") requests a variance to reduce the required parking spaces from 101 to 42 spaces at the subject property. The subject property is known as the proposed Olive Garden lease area and is located at 17410 Valley Mall Road, Hagerstown, Maryland 21740; is owned by the Appellant; and is zoned Planned Business (PB). The Board held a public hearing on the matter on November 13, 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 identified as the proposed Olive Garden lease area located at 17410 Valley Mall Road, Hagerstown, Maryland. The property is zoned Planned Business (PB).
2. The subject property is part of the total 63.31-acre Valley Mall parcel which includes the primary mall footprint and 5,024 parking spaces. Appellant also owns several subdivided parcels including Popeyes, Burger King, NTB and Chuck-E-Cheese.

3. The original Valley Mall was constructed and opened in 1974. It has had two (2) significant renovations, in 1995 and 1999, after which the mall doubled in size.

4. The Olive Garden restaurant opened in 2006 at the subject property. Olive Garden and/or its parent company currently leases an approximate 1.12-acre parcel which includes the restaurant, some parking and a panhandle which encompasses public utility access for the property.

5. Appellant proposes to subdivide the subject property and create Lot 1, consisting of the 1.12-acre parcel that is now subject to the lease for Olive Garden. The proposed Lot 1 would contain 42 parking spaces, which are included in the current lease area.

6. Appellant received approval from the Planning Commission for use of shared parking facilities with Valley Mall. Said approval permits the proposed Lot 1 to utilize general mall parking spaces to fulfill parking needs for its existing use as an Olive Garden restaurant.

7. The parcel which contains Noodles & Co. and Starbucks was previously subdivided and later sold. Appellant had also secured approval for shared parking facilities because that particular parcel has minimal parking for the uses thereon.

8. The remaining 59 parking spaces will be available for use by the Olive Garden restaurant, just not included in the subdivision of Lot 1.

9. There was no opposition presented to this request.

## Rationale

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56. <sup>1</sup> “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).

Practical difficulty and undue hardship are the result of a property being unique. “‘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).)

Appellant seeks a variance to reduce the allotted parking spaces from 101 to 42 spaces on a proposed subdivision, Lot 1, which is currently the Olive Garden lease area at the Valley Mall. Appellant currently owns the subject property and is looking to create a separate lot of record to join several of the other outlying businesses surrounding the mall. The proposal is joined by similar subdivision plans for Golden Corral restaurant<sup>2</sup>

---

<sup>1</sup> “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).

<sup>2</sup> Appellant is also seeking a parking variance for this property, Case No. AP2019-023.



and Firestone<sup>3</sup>. Appellant intends to improve flexibility and marketability of the property by creating a separate lot that can be sold if necessary, to generate funding for much needed capital improvements to the remaining mall lands. Olive Garden will continue to be the lessee of the property after subdivision and there are no imminent plans to sell; Appellant is simply planning for future possibilities.

Appellant has limited the proposed Lot 1 to be consistent with the current leasehold area occupied by Olive Garden. Although the restaurant has access to 101 parking spaces in the area along the Halfway Boulevard road frontage, only 42 of those spaces are part of the leased area, and therefore are the spaces included within proposed Lot 1. Appellant's justification for this is the uncertainty of future development to Underpass Way and Valley Mall Road. It is certainly foreseeable that expansion of either roadway would be necessary in the future and would require the taking of portions of the parking area currently utilized but not leased, by Olive Garden. Moreover, it is both legally and economically consistent that the new subdivided lot be the same area governed by the lease in order to make it severable for possible sale in the future.

To require the full 101 spaces be maintained for the proposed subdivision would result in substantial economic harm to Appellant and would unreasonably prevent an otherwise permitted and practical subdivision of the property. It would be an unjust and an unfair result to require a larger subdivision inclusive of all 101 spaces, especially when a substantial part of it is mandated to be parking, reducing the market value. The subdivided Lot 1 will still have use of the additional parking as well as the general mall parking under the approved shared parking facilities, which mitigates any possible detrimental effect of granting the variance. Furthermore, the operation of the Olive Garden business, the mall and the parking lots will remain unchanged even after the

---

<sup>3</sup> Does not require a parking variance due to limited parking needs of business.

variance and subdivision approval.

Accordingly, the request for a variance to reduce the required parking from 101 to 42 spaces at the property known as 17410 Valley Mall Road, Hagerstown, Maryland is GRANTED.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: December 3, 2019

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

**PR VALLEY LIMITED PARTNERSHIP**

**Appeal No. AP2019-023**

**Appellant**

**OPINION**

PR Valley Limited Partnership (hereinafter "Appellant") requests a variance to reduce the required parking spaces from 158 to 97 spaces at the subject property. The subject property is known as the proposed Golden Corral lease area and is located at 17635 Valley Mall Road, Hagerstown, Maryland 21740; is owned by the Appellant; and is zoned Planned Business (PB). The Board held a public hearing on the matter on November 13, 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 which is identified as the Golden Corral lease area located at 17635 Valley Mall Road, Hagerstown, Maryland. The property is zoned Planned Business (PB).

2. The subject property is part of the total 63.31-acre Valley Mall parcel which includes the primary mall footprint and 5,024 parking spaces. Appellant also owns several subdivided parcels including Popeyes, Burger King, NTB and Chuck-E-Cheese.

3. The original Valley Mall was constructed and opened in 1974. It has had two (2) significant renovations, in 1995 and 1999, after which the mall doubled in size.

4. The Golden Corral restaurant opened in 2008 at the subject property. Olive Garden and/or its parent company currently leases an approximate 1.67-acre parcel which includes the restaurant and parking surrounding the building.

5. Appellant proposes to subdivide the subject property and create Lot 5, consisting of the 1.67-acre parcel that is now subject to the lease for Golden Corral. The proposed Lot 5 would contain 97 parking spaces, which are included in the current lease area.

6. Appellant received approval from the Planning Commission for use of shared parking facilities with Valley Mall. Said approval permits the proposed Lot 5 to utilize general mall parking spaces to fulfill parking needs for its existing use as a Golden Corral restaurant.

7. The parcel which contains Noodles & Co. and Starbucks was previously subdivided and later sold. Appellant had also secured approval for shared parking facilities because that particular parcel has minimal parking for the uses thereon.

8. The remaining 61 parking spaces will be available for use by the Golden Corral restaurant, just not included in the subdivision of Lot 5.

9. There was no opposition presented to this request.

### **Rationale**

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56. <sup>1</sup> “Practical Difficulty” may be found by the

---

<sup>1</sup> “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

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).

Practical difficulty and undue hardship are the result of a property being unique. “‘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).)

Appellant seeks a variance to reduce the allotted parking spaces from 158 to 97 spaces on a proposed subdivision, Lot 5, which is currently the Golden Corral lease area at the Valley Mall. Appellant currently owns the subject property and is looking to create a separate lot of record to join several of the other outlying businesses surrounding the mall. The proposal is joined by similar subdivision plans for Olive Garden restaurant<sup>2</sup> and Firestone<sup>3</sup>. Appellant intends to improve flexibility and marketability of the property by creating a separate lot that can be sold if necessary, to generate funding for much needed capital improvements. Golden Corral will continue to be the lessee of the property after subdivision and there are no imminent plans to sell; Appellant is simply

---

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).

<sup>2</sup> Appellant is also seeking a parking variance for this property, Case No. AP2019-022.

<sup>3</sup> Does not require a parking variance due to limited parking needs of business.

planning for future possibilities.

Appellant has limited the proposed Lot 5 to be consistent with the current leasehold area occupied by Golden Corral. Although the restaurant has access to 158 parking spaces in the immediate area surrounding the building footprint, only 97 of those spaces are part of the leased area, and therefore included within proposed Lot 5. Like several of the other outparcels, it is both legally and economically consistent that the new subdivided lot be the same area governed by the lease in order to make it severable for possible sale in the future.

To require the full 158 spaces be maintained for the proposed subdivision would result in substantial economic harm to Appellant and would unreasonably prevent an otherwise permitted and practical subdivision of the property. It would be an unjust and an unfair result to require a larger subdivision to include all of the spaces, especially when a substantial part of it is mandated to be parking, reducing the market value. The subdivided Lot 5 will still have use of the additional parking as well as to general mall parking under the approved shared parking facilities, which mitigates any possible detrimental effect of granting the variance. Furthermore, the operation of the Golden Corral business, the mall and the parking lots will remain unchanged even after the variance and subdivision approval.

Accordingly, the request for a variance to reduce the required parking from 158 to 97 spaces at the property known as 17635 Valley Mall Road, Hagerstown, Maryland is GRANTED.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: December 3, 2019