

**BOARD OF APPEALS**

**January 8, 2020**

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

**AGENDA**

**DOCKET NO. AP2019-027:** An appeal made by Heather Broadley-Weikel for a variance from the required 25 ft. setback from the street right of way to 22 foot 7 inches for the placement of freestanding sign on property owned by McDonalds Corporation located at 10525 Sharpsburg Pike, Hagerstown, Zoned Highway Interchange. - **GRANTED**

**DOCKET NO. AP2019-028:** An appeal made by John Ward for a variance from the required 15 ft. left side and rear yard setbacks to 4.5 ft. for a two-car detached garage previously approved for a 5 ft. setback under appeal AP2018-027 on property owned by the Appellant and located at 18528 Elk Ridge Drive, Hagerstown, Zoned Preservation. - **GRANTED**

**DOCKET NO. AP2019-029:** An appeal made by Brandon J. Martin for a variance from the required 40 ft. rear yard setbacks to 30 ft. for the construction of an attached three season room on property owned by John P. Foly Jr. & Colleen L. Foley Trustees located at 13930 Patriot Way, Hagerstown, Zoned Residential Transition. - **GRANTED**

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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 Katie Rathvon at 240-313-2464 Voice, 240-313-2130 Voice/TDD no later than December 30, 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**

**HEATHER BROADLEY-WEIKEL**

**Appeal No. AP2019-027**

**Appellants**

**OPINION**

This appeal is a request for a variance to reduce the 25-foot setback from the street right of way to 22 feet, 7 inches for placement of a freestanding sign at the subject property. The subject property is located at 10525 Sharpsburg Pike, Hagerstown, Maryland 21740; is owned by McDonald's Corporation, The Golden M Co.; and is zoned Highway Interchange (HI). The Board held a public hearing on the matter on January 8, 2020.

**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. The subject property is located at 10525 Sharpsburg Pike, Hagerstown, Maryland 21740 is owned by McDonalds Corporation, The Golden M Co. The property is zoned Highway Interchange (HI). It is operated as a McDonalds Restaurant.
2. Heather Broadley-Weikel (hereinafter "Appellant") is employed by Strickler Signs who installed the freestanding digital sign at the subject property and who

is authorized to make this appeal request on behalf of the owner.

3. The subject property currently has a freestanding pylon sign with digital board located at the entrance and 22 feet, 7 inches from the street right of way.

4. The pylon sign with digital board has been in place for two (2) years. State Highway Administration requested that it be relocated to its existing location during renovations to the property.

5. During the survey process for Final Inspection, it was discovered that the sign was not 25 feet from the street right of way, but rather 22 feet, 7 inches.

6. The sign's current location does not block sight lines or visibility and has had no detrimental effect on the operation of the property or surrounding properties.

7. The sign's current location is in line with the larger highway sign located on the opposite side of the property.

8. 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. \* "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

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\* "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).

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 asks the Board to confirm the location of the existing sign by granting a variance that was not necessary until after construction was completed. It is important to note that but for the survey measurements done for Final Inspection, the placement of the sign would have likely gone unnoticed. To strictly enforce the setback requirements at this time would be unnecessarily burdensome to the property owner. It would require tear down and relocation of a large pylon sign with digital board, which would likely require additional financial investment which would do substantial injustice under the circumstances. Moreover, the users of the property and those that pass by regularly have grown accustomed to the sign's location for purposes of ingress and egress. 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, this request for a variance to reduce the 25-foot setback from the street right of way to 22 feet, 7 inches is hereby GRANTED by a vote of 5-0.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: January 31, 2020

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

**JOHN AND SARAH WARD**

**Appeal No. AP2019-028**

**Appellants**

**OPINION**

This appeal is a request for a variance to reduce the side yard setback from 15 feet to 4.5 feet and a variance to reduce the rear yard setback from 15 feet to 4.5 feet, correcting a previous request to reduce both to 5 feet. The subject property is located at 19528 Elk Ridge Drive, Keedysville, Maryland 21756; is owned by John and Sarah Ward; and is zoned Preservation. The Board held a public hearing on the matter on January 8, 2020.

**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. John and Sarah Ward (hereinafter "Appellants") are the owners of the subject property, located at 19528 Elk Ridge Drive, Keedysville, Maryland. The subject property currently has two (2) dwellings on approximately 22,540 square feet of lot area. The homes were constructed in the 1940s and predate the existence of the Zoning Ordinance.

2. Appellants were before this Board in Case No. AP2018-027 to obtain

variance relief in order to construct a two-car detached garage. The Board granted variances to reduce the left side yard and rear yard setbacks from 15 feet to 5 feet for the proposed garage. The garage has since been constructed.

3. Appellants have owned the property for approximately three (3) years and use as their principal residence.

4. Appellants' home is located at the top of a steep knoll and their driveway climbs that same knoll to the side of the home. The septic field is in the area directly adjacent to the opposite side of the home.

5. 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. \* "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, the applicable side and rear yard setback requirement is 15', respectively. Appellant seeks to reduce both to construct a detached garage.

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\* "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).

“‘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 Board adopts its finding of uniqueness previously made in Case No. AP2018-027.

The Appellant has demonstrated a practical difficulty if variance relief is not granted. Appellants’ home is very close to the boundary line on that side due to the septic field located on the opposite side. Moreover, if Appellants were to comply with the setback requirements, they would now be placed in the untenable position of having to tear down or otherwise alter the existing detached garage. This would impose the most severe of hardships as it would require further work and financial investment in order to correct an error that was not of their doing. The further relaxation of the setback requirements to actual existing conditions is necessary and avoids the extremely unfair and unreasonable relocation of the garage. 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, this request for variances to reduce the side and rear yard setbacks to five (4.5) feet are hereby GRANTED by a vote of 5–0.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: January 31, 2020

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

**BRANDON MARTIN**

**Appeal No. AP2019-029**

**Appellant**

**OPINION**

This appeal is a request for a variance to reduce the rear yard setback from 40 feet to 30 feet to construct a three (3) season room at the subject property. The subject property is located at 13930 Patriot Way, Hagerstown, Maryland 21740; is owned by John P. Foley and Colleen L. Foley, Trustees; and is zoned Residential Transition (RT). The Board held a public hearing on the matter on January 8, 2020.

**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. The subject property is located at 13930 Patriot Way, Hagerstown, Maryland 21740 and is owned by John P. Foley and Colleen L. Foley, Trustees. The property consists of one-half of a duplex residence on approximately ± 0.17 acres and is zoned Residential Transition (RT).
2. Brandon Martin (hereinafter "Appellant") is the contractor for the proposed construction herein and has been authorized by the owners to bring this appeal.



3. The property consists of a one-half duplex residence which shares a party wall to the northeast and is bordered by a retention pond and railroad tracks. It is located in the Freedom Hills Development.

4. The residence has a rear door that is currently situated two (2) feet off the ground and is unusable unless an addition is constructed. Appellant proposes to construct a three (3) season room to the rear of the property, using the door as the entrance. It is proposed to be 10 feet by 14 feet which would extend into the existing setback area.

5. The east side of the residence is situated along the 10-foot side yard setback.

6. The front yard of the property is mostly occupied by a macadam driveway.

7. 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. \* “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.

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\* “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).

§ 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 Board finds uniqueness based on the location of the residence in relation to the boundary lines and setback lines. The lot line to the west is a party wall and the front yard is mostly driveway. The house also sits on the east side yard setback line.

The Appellant has demonstrated a practical difficulty if variance relief is not granted. The rear yard of the home is the only place where any reasonable expansion can occur given the location of the home on the property. The party wall to the west prohibits any expansion and the driveway and angled setback line prevent any meaningful expansion to the front of the home. The east side of the home runs along the setback line and would only give 10 feet of available space to the boundary line, even if such variance were requested and granted. The rear yard has plenty of room and is the only logical place for an addition. Appellant has requested the minimum necessary to ensure a properly sized three (3) season room. Given the location of the home related to the railroad tracks and retention pond, the proposed addition is unlikely to affect any neighbors and does not confer any special benefit for the owners. If Appellant were to comply with the setback requirement, he would have to construct a 10-foot-wide by 4-foot-deep room that would serve no purpose. 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, this request for a variance to reduce the rear yard setback from 40 feet to 30 feet to construct a three (3) season room at the subject property is hereby GRANTED by a vote of 5-0.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: January 31, 2020