

BOARD OF APPEALS

March 04, 2020

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

AGENDA

DOCKET NO. AP2020-005: Deliberations for an appeal made by Stephen Showe from the Planning Commission determination to create a one lot subdivision be denied due to the private road or right of way not being contained solely within the boundaries of the original parcel of land and not serving an existing residence on the same property on property owned by the Appellant and located adjacent to 17518 Taylors Landing Road, Sharpsburg, Zoned Environmental Conservation and Rural Village. **CONTINUED to April 1, 2020**

DOCKET NO. AP2020-006: An appeal made by Donna Lynch for a special exception to establish an alternative healing facility (spa), and variance from minimum of 12 parking space requirement to 6 on property owned by the Appellant and located at 19021 Poffenberger Road, Hagerstown, zoned Residential Urban.- **GRANTED**

DOCKET NO. AP2020-007: An appeal made by PR Valley Anchor-S LLC for a variance to allow for 72 parking spaces to be provided on an adjacent lot of record not containing the principal permitted use on property owned by the Appellant and located at 17318 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 Chrysta Hays at 240-313-2485 Voice, 240-313-2130 Voice/TDD no later than February 24, 2020. 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**

DONNA LYNCH

Appeal No. AP2020-006

Appellant

OPINION

Donna Lynch (hereinafter “Appellant”) applies for a special exception to establish an alternative healing facility (spa) and requests a variance to reduce the required parking spaces from 12 to 6 at the subject property. The subject property is a residential property located at 19021 Poffenberger Road, Hagerstown, Maryland; is owned by the Appellant; and is zoned Residential, Urban, RU. The Board held a public hearing on the matter on March 4, 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. Appellant is the owner of improved real property known as 19021 Poffenberger Road, Hagerstown, Maryland. The property consists of a single family, Cape Cod-style dwelling which serves as a principal residence. The property is zoned

Residential Urban, RU.

2. Appellant recently purchased the property in October 2019.
3. Both Appellant and her daughter are cancer survivors who benefitted from natural healing treatments during chemotherapy and radiation. Appellant desires to open her own healing house, named Creekside Healing Home, LLC and to bring the alternative healing treatments she received to Washington County and the surrounding areas.
4. Appellant proposes to construct a dwelling type structure that will match the design and aesthetics of the existing home on the property.
5. Appellant plans to operate Monday through Friday between the hours of 9:30 a.m. and 6:00 p.m., as well as Saturdays between the hours of 10:00 a.m. and 2:00 p.m. All customers will be seen by appointment and there will be no walk-in treatments.
6. Appellant proposes to provide acupuncture, reiki, detox services, healing coach services and a salt room. Appellant and her daughter are certified in these services and her son-in-law is attending acupuncture school.
7. The proposed business will have six (6) dedicated parking spaces for customers. Appointments will be scheduled on the hour and there would not be more than six (6) cars in the parking area at any given time.
8. Aside from parking, all parts of the business would be contained inside the building.
9. There was no opposition presented to this appeal

Rationale

This appeal includes both a special exception request and a variance request related to the special exception use. Given that the variance is only necessary if the special exception use is granted, the Board shall consider the special exception request first.

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 establish an alternative healing facility (spa) at the subject property.

The testimony and evidence presented clearly demonstrate that this proposed business will have little if any outward impact on the surrounding neighborhood. Aside from customer traffic, in the amount of no more than 5 to 6 per hour, and possible signage, there will be nothing to discern the proposed use as a business. Appellant’s stated intention of designing the building to appear like the existing dwelling further mitigates the potential impact of the business. The Board finds there are no adverse effects inherent to the proposed use that would have an impact greater at the subject property than elsewhere in the zoning district. The special exception to establish an alternative healing facility (spa) should be granted.

Variance Request

The 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).

In the instant case, the nature of the business is self-limiting; they can only serve a limited number of customers at one time, thus their demand for parking is reduced. Appellant’s vision for the alternative healing facility is a relaxing, peaceful setting where people can receive natural healing treatments. In her design, Appellant has attempted to maintain a residential style and to mitigate against the appearance of the use as a business. It would cause undue hardship to artificially require double the amount of parking spaces that Appellant can actually use for the business. The variance should be granted to require only six (6) parking spaces as proposed.

Accordingly, the request for a special exception to establish an alternative healing facility (spa) at the subject property is hereby GRANTED, by a vote of 5–0. The request for a variance to reduce the minimum required parking spaces from 12 to 6 at the subject

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).

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: March 31, 2020

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

PR VALLEY ANCHOR-S, LLC

Appeal No. AP2020-007

Appellant

OPINION

PR Valley Anchor-S, LLC (hereinafter “Appellant”) requests a variance to reduce the required parking spaces from 141 to 69 spaces at the subject property. The subject property is known as the “Former Sears Lease Area” and is located at 17318 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 March 4, 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. Appellant is the owner of the subject property identified as the “Former Sears Lease Area” which includes the existing BJ’s Brewhouse restaurant, Verizon and Sleep Number stores, as well as the new Dick’s Sporting Goods store (formerly Sears). 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, Chuck-E-Cheese, as

well as recently approved Olive Garden and Golden Corral.

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 subject property was the original Montgomery Wards Department Store and then became Sears, along with the Sears Automotive Center.

5. Appellant proposes to subdivide the subject property and create Lot 9, consisting of the 1.43-acre parcel that is now subject to the lease for BJ's Brewhouse, Sleep Number and Verizon. The proposed Lot 9 would contain 69 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 9 to utilize general mall parking spaces to fulfill parking needs for its existing uses.

7. 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. 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.

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).

§ 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 141 to 69 spaces on a proposed subdivision, Lot 9, which is currently the lease area for BJ’s Brewhouse, Sleep Number and Verizon 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. 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. The existing businesses will continue to be the lessees 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 9 to be consistent with the current leasehold area occupied by the existing businesses. 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 141 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 141 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 variance and subdivision approval.

Accordingly, by a unanimous vote of 5-0, the request for a variance to reduce the required parking from 141 to 69 spaces at the property known as the "Former Sears Lease Area" at 17318 Valley Mall Road, Hagerstown, Maryland is GRANTED.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: March 31, 2020