

BOARD OF APPEALS

April 1, 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. **-GRANTED**

DOCKET NO. AP2020-008: An appeal made by Jason Adkins for a variance from minimum 50 ft. side yard to 9 ft right side yard, and 25 ft. left side yard setback for proposed detached auto repair shop on property owned by the Appellant and located at 9920 Crystal Falls Drive, Hagerstown, zoned Rural Village with Rural Business overlay. **-GRANTED**

DOCKET NO. AP2020-009: An appeal made by Eric Martin & Lucinda Horst for a variance from minimum 15 ft. right side and rear yard setback to 5 ft. for construction of detached storage shed on property owned by the Appellant and located at 13713 Franks Run Road, Smithsburg, zoned Agricultural (Rural). **- GRANTED**

DOCKET NO. AP2020-010: An appeal made by Heritage Huyett LLC for a variance from minimum of 544 parking space requirement to 408 parking spaces for future warehouse or wholesale establishment on property owned by the Appellant and located at 16422 National Pike, Hagerstown, zoned Planned Industrial. **- 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 Katie Rathvon at 240-313-2464 Voice, 240-313-2130 Voice/TDD no later than March 23, 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**

STEPHEN SHOWE
Appellant

Appeal No.: AP2020-005

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OPINION

Stephen Showe (hereinafter “Appellant”) brings this appeal from a denial by the Planning Commission¹ of his request to modify the subdivision requirements to create a one (1) lot subdivision at the subject property. The subject property is located adjacent to 17518 Taylors Landing Road, Sharpsburg, Maryland 21782 and bears a Tax ID NO. 12011962; is owned by the Appellant and his wife, Elaine Showe; and is zoned Rural Village, RV. The Board initially held a public hearing on the matter on February 19, 2020, but the proceedings were postponed. The Board held a second public hearing on the matter on May 13, 2020.²

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 Whenever referenced herein, it shall include the Director and Zoning Administrator, Ashley Holloway, acting as the Planning Commission’s designee.

² Due to the COVID-19 pandemic, in-person access and contact for public hearings has been limited, especially in County buildings. The members of the Board of Appeals, counsel, staff, and the Appellant were the only persons physically in attendance for the hearing. All other witnesses and the public at large were permitted to participate by telephone/video. All notices for the hearing provided the information necessary to call in and/or participate remotely and those who wished to participate were encouraged to make written submissions as well.

1. Appellant is the owner of property located at 17518 Taylors Landing Road, Sharpsburg, Maryland 21782. The property contains his principal residence and adjoins the subject property.

2. Appellant owns the subject property, which is located adjacent to 17518 Taylors Landing Road, Sharpsburg, Maryland 21782 and bears a Tax Id No. 12-011962.

3. The subject property consists of approximately thirty-five (35) acres of unimproved property with access to Tommytown Road via a shared private lane.

4. The subject property and neighboring lands owned by John and Brenda Goodwyn share use of the private lane from Tommytown Road. The private lane travels onto the Goodwyn property before returning to the subject property and continuing beyond Appellant's home and to Taylors Landing Road.

5. Appellant and Mr. and Mrs. Goodwyn have agreed to dedicate the private lane as an easement for their mutual use and access to the respective properties.

6. Appellant proposes to subdivide the subject property creating a two (2) acre lot for his son to construct his family home.

7. Appellant sought approval from the Planning Commission for the proposed two (2) acre subdivision. Said approval required a modification of the criteria for such subdivisions under the Subdivision Ordinance.

8. Appellant received a letter dated January 16, 2020, denying the requested subdivision from Ashley Holloway, Director, Division of Plan Review and Permitting. The subdivision was denied because it did not meet two (2) of the criteria outlined in Section 405.11B of the Subdivision Ordinance.

9. It is common practice for the Planning Commission to delegate approval of subdivision requests to the Director of the Division of Plan Review and Permitting.

10. Appellant timely noted this appeal to the Board of Appeals herein.

Rationale

Appellant seeks a modification of conditions set forth in the Subdivision Ordinance to secure approval of the proposed subdivision of two (2) acres for a family member. The Planning Commission, through the Director, denied the request as it did not comply with the conditions of the Subdivision Ordinance. Appellant noted this appeal pursuant to Section 25.4 of the Zoning Ordinance.

The Subdivision Ordinance

The Washington County Subdivision Ordinance provides for the configuration and orientation of lots, as well as sets forth the requirements for road frontage and access in Section 405.11. Specifically, Section 405.11 B.1 provides:

- B. Every lot shall abut a minimum of twenty-five (25) feet, and shall have access to a road or street that has been dedicated to public use and accepted for public maintenance, except as follows:
 - 1. The Commission may approve the subdivision of land solely for transfer to a member or members of the immediate family of the owner of the lot of record, where subdivided lots will front on a private road or right of way existing at the time of the original parcel's acquisition by the current owner with the following conditions...

Section 405.11 B.1 goes on to enumerate seven (7) conditions that must be present for such a subdivision to be approved. In the instant case, only two (2) of the conditions are at issue, Section 405.11 B.1(a) and (b) which provide:

- (a) the private road or right of way must be contained solely within the boundaries of the original parcel of land,
- (b) the private road or right of way must serve an existing residence on the same property. The land must meet the definition of agricultural purposes as defined in Article II, Section 202.3 of the Subdivision

Ordinance.

Appellant seeks a modification of all of subsection (a) and the first portion of subsection (b). The Planning Commission through delegation to the Director, appears to have denied subdivision approval based on the failure to meet the above conditions, without any consideration for Appellant's proposed modification.

Section 405.11 B.1(a) -- The private road or right of way must be contained solely within the boundaries of the original parcel of land.

The private lane serving the subject property gives it access to both Tommytown Road and if necessary, to Taylors Landing Road through Appellant's homestead property. As noted, the lane leaves the subject property for a brief portion and crosses the neighboring lands of John and Brenda Goodwyn. The Goodwyns also use the private lane to access their driveway and garage. A closer look at the topography of the subject property reveals that the lane was created this way to avoid having to traverse sloping, rocky terrain. To ensure their respective property rights, Appellant and the Goodwyns have agreed to confer easements upon each other's land for the use of the private lane.

Clearly, this condition imposed by the Subdivision Ordinance is to make sure that lots are not created without access. In this case, Appellant was able to alleviate that concern by securing a recorded right-of-way³ that provides access to the subject property and the proposed subdivided lot. The Board finds this solution to be a reasonable and appropriate compromise, given that the location of the private lane otherwise prevents compliance with the stated condition for subdivision. It also promotes the spirit of home ownership and familial relationships to unburden the ability to establish homestead lots for one's children. Appellant's proposed modification should be accepted, and the proposed subdivision should be approved.

³ The easement/right-of-way has been agreed to and will be recorded as part of the subdivision plat.

Section 405.11 B.1(b) -- The private road or right of way must serve an existing residence on the same property.

In the instant case, the private lane on the subject property technically serves Appellant's residence, insofar as it is a means of access to the residence from Tommytown Road. Appellant acknowledges that it is not used regularly for such a purpose, but it does *serve* the existing residence. Under the circumstances, it is understandable that the Planning Commission and/or Director would find the private lane does not comply with subsection (b). The conditions serve to protect a lot from having no access after creation. However, Appellant is only asking for a slight relaxation in the strict mandates of that condition, to allow technical interpretation of what constitutes serving the existing residence. There is no doubt that private lane exists and can be utilized, it just has not been the regular practice during Appellant's ownership. The Board finds the modification request to be reasonable and appropriate, and consistent with the spirit of familial property ownership. The modification should be accepted, and the proposed subdivision should be approved.

Accordingly, the appeal of the Planning Commission's denial of Appellant's request to modify the subdivision requirements in order to create a one (1) lot subdivision at the subject property is hereby SUSTAINED and the Planning Commission's denial is hereby REVERSED, by a unanimous vote. The conditions imposed by Section 405.11 B.1(a) and (b) of the Subdivision Ordinance are hereby modified and the proposed subdivision for the subject property should be approved.

BOARD OF APPEALS

By: Michael Zampelli, Acting Chair

Date Issued: June 11, 2020

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

JASON ADKINS

Appellant

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Appeal No.: AP2020-008

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OPINION

Jason Adkins (hereinafter “Appellant”) requests a variance to reduce the right side yard setback and left side yard setback from fifty (50) feet to twenty-five (25) feet, and the right side yard setback from fifty (50) feet to nine (9) feet at the subject property. The subject property is located at 9920 Crystal Falls Drive, Hagerstown, Maryland 21740; is owned by the Appellant; and is zoned Rural Village, RV. The Board held a public hearing on the matter on May 13, 2020.¹

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 owns and resides at the subject property located at 9920 Crystal Falls Drive, Hagerstown, Maryland. The property is zoned RV, Rural Village and consists of a residence and large garage building.

¹ Due to the COVID-19 pandemic, in-person access and contact for public hearings has been limited, especially in County buildings. The members of the Board of Appeals, counsel, staff, and the Appellant were the only persons physically in attendance for the hearing. All other witnesses and the public at large were permitted to participate by telephone/video. All notices for the hearing provided the information necessary to call in and/or participate remotely and those who wished to participate were encouraged to make written submissions as well.

2. The subject property is exceptionally narrow, measuring approximately 113 feet wide and is wooded on three (3) sides.

3. Appellant owns and operates Adkins Automotive, LLC, a vehicle service and repair business which is located at the subject property.

4. The existing garage building at the subject property is used for the office and shop area for vehicle service/repair activities.

5. Appellant has developed a significant client base of local fire departments, servicing their vehicles, engines, and fire apparatus. Currently, Appellant's business serves thirteen (13) different fire departments from around the tri-state area.

6. To service the large engine trucks and apparatus, Appellant must make a multi-point turn to get them inside the existing garage. In addition, Appellant must clear the garage of any other vehicles.

7. Appellant proposes to construct a second garage building situated so that large vehicles and fire apparatus can pull directly into the garage from the parking lot area and can be stored there without the need for moving other vehicles.

8. Appellant met with his immediate neighbors about the proposed construction and they indicated they were not opposed to the proposed project.

9. Appellant previously obtained variance relief to permit construction of the existing garage building.

10. There was no opposition presented to this appeal.

Rationale

The Board has authority to grant a variance upon a showing of practical difficulty

or undue hardship. §§ 25.2(c) and 25.56. ² “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).)

In the instant case, the subject property exceptionally narrow and the setback requirements create a small alley within which to build. The narrowness makes the property unique and creates practical difficulties in the use and expansion of Appellant’s existing business. In fact, these issues were present when Appellant constructed the existing building because of the need for turning radius for vehicles to enter the garage building.

In part, due to that prior approval and in large part due to Appellant’s efforts, his business has enjoyed great success over the years. This has enabled the business to

² “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).

become the trusted service and repair business for multiple fire departments in the area. Appellant's business provides a community service, not only in the servicing of vehicles, engines, and fire apparatus but in doing the work timely and for reasonable pay. While such equipment may be housed in local fire departments, it belongs to the tax-paying public and its maintenance and repair are vital to protecting the public investment therein.

Appellant would likely need a variance regardless of the way the building was located, given the exceptional narrowness of the property. Requiring strict adherence to the Ordinance will unnecessarily impose severe limitations on Appellant's ability to expand his business. It is the minimum necessary for the proposed construction and it is not self-created. The spirit and intent of the Ordinance is perpetuated by grant the relief necessary for this project to be completed.

Accordingly, the requests for variances to reduce the left side yard setback from fifty (50) feet to twenty-five (25) feet, and the right side yard setback from fifty (50) feet to nine (9) feet are hereby GRANTED, by a vote of 4-0. The application is granted upon the condition that the proposed use be consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Michael Zampelli, Acting Chair

Date Issued: June 10, 2020

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

ERIC MARTIN

Appellant

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Appeal No.: AP2020-009

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OPINION

Eric Martin (hereinafter “Appellant”) requests a variance to reduce the right side yard setback from fifteen (15) feet to five (5) feet and to reduce the rear yard setback from fifteen (15) feet to five (5) feet at the subject property. The subject property is located at 13713 Franks Run Road, Smithsburg, Maryland 21783 and is owned by the Appellant. The subject property is zoned RV, Rural Village. The Board held a public hearing on the matter on May 13, 2020.¹

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 13713 Franks Run Road, Smithsburg, Maryland 21783. The property is zoned Agricultural, Rural A(R).
2. Appellant and his wife purchased the subject property in 2003 and have not altered the shape or size of the property, nor have they made any changes to the boundary

¹ Due to the COVID-19 pandemic, in-person access and contact for public hearings has been limited, especially in County buildings. The members of the Board of Appeals, counsel, staff, and the Appellant were the only persons physically in attendance for the hearing. All other witnesses and the public at large were permitted to participate by telephone/video. All notices for the hearing provided the information necessary to call in and/or participate remotely and those who wished to participate were encouraged to make written submissions as well.

lines.

3. The subject property is approximately 100 feet by 200 feet, or 20,000 square feet in size. The surrounding properties are all approximately one (1) acre lots.

4. The backyard of the subject property has a large septic area and is sloped, limiting the available area for accessory buildings.

5. Appellant proposes to construct a 10 foot by 18-foot garden shed for storage, in the back corner of the subject property. Many of the surrounding properties in the neighborhood have storage sheds located at the rear or rear corner of their respective properties.

6. There was no opposition presented to this appeal.

Rationale

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56. ² “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,

² “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).

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 subject property is approximately one-half the size of the neighboring properties. It contains septic lines through large portions of the backyard and slopes in areas. All of these constitute unique characteristics that impose practical difficulty on the location of a storage shed. Appellant is limited in his ability to locate the shed unless he builds very close to the residence, which is not optimal nor aesthetically pleasing. In addition, there are several neighboring properties who have a shed located in the position that Appellant proposes herein, they just have more area to avoid the issues presented at the subject property. The Board finds that strict adherence with the Ordinance provisions would produce an unfair result and deny Appellant a benefit common to the surrounding properties. The Board further finds that Appellant’s proposed use and the requested relaxation of the setback requirements is consistent with the spirit and intent of the Ordinance.

Accordingly, the requests for variances to reduce the right side yard setback from fifteen (15) feet to five (5) feet and to reduce the rear yard setback from fifteen (15) feet to five (5) feet at the subject property are 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: June 10, 2020

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

HERITAGE HUYETT, LLC

Appellant

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Appeal No.: AP2020-010

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OPINION

Heritage Huyett, LLC (hereinafter “Appellant”) requests a variance to reduce the minimum required parking spaces from 544 to 408 parking spaces at the subject property. The subject property is located at 16422 National Pike, Hagerstown, Maryland 21740; is owned by the Appellant; and is zoned Planned Industrial, PI. The Board held a public hearing on the matter on May 13, 2020.¹

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 16422 National Pike, Hagerstown, Maryland 21740. The subject property is zoned Planned Industrial, PI.
2. The subject property consists of an oddly shaped lot that narrows towards the back and contains wetlands and forested areas that are undevelopable.
3. On February 11, 2020, the Board of County Commissioners approved a

¹ Due to the COVID-19 pandemic, in-person access and contact for public hearings has been limited, especially in County buildings. The members of the Board of Appeals, counsel, staff, and the Appellant were the only persons physically in attendance for the hearing. All other witnesses and the public at large were permitted to participate by telephone/video. All notices for the hearing provided the information necessary to call in and/or participate remotely and those who wished to participate were encouraged to make written submissions as well.

request to rezone the subject property from Business Local, BL to Planned Industrial, PI.

4. Appellant proposes to construct a 730,910 square foot warehouse building for marketing to an end user for warehousing and distribution.

5. It is expected that the end user operation will have between 220 and 240 employees and personnel at the subject property during the busiest times.

6. The market for warehousing and distribution demands the largest possible usable space for end user operations.

7. There are no dense residential or commercial uses nearby that would be directly affected by this project.

8. There was no opposition presented to this appeal.

Rationale

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56. ² “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

² “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).

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 subject property has an unusual shape that causes it to narrow toward the back. In addition, there is a slope towards the west, which coupled with the wetlands and forestation, limits the developable area. These characteristics render the subject property unique and that uniqueness makes strict adherence to the Ordinance parking requirements unnecessarily burdensome.

Appellant argues that while the logic and reasoning behind minimum required parking calculation can be comprehended, they are nevertheless arbitrary as applied herein. Appellant has designed a building that maximizes the amount of usable space while also providing for 408 parking spaces. The number of parking spaces far exceeds the number of employees that would be present at any given time and the intended use is not one that receives consistent visitor or customer traffic.

If Appellant were to maintain 408 parking spaces, it could construct a building that had 612,000 square feet of usable space. This would be a reduction of approximately 118,000 square feet of usable space, in the name of strict compliance. This is an unjust and unintended consequence of the Ordinance requirements. By virtue of their rezoning approval, the Commissioners clearly viewed this project as a good opportunity for economic development. That opportunity is frustrated by requiring Appellant to comply with the minimum required parking spaces as set by the Ordinance. The requested variance is the minimum necessary for Appellant to make full use of the subject property and is not the result of a self-created condition. Appellant should be granted the relief

necessary to alleviate the practical difficulties resulting from strict compliance with the Ordinance.

Accordingly, the request for a variance to reduce the minimum required parking spaces from 544 to 408 parking spaces at the subject property are hereby GRANTED, by a vote of 4-0. 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: June 10, 2020