

BOARD OF APPEALS

May 27, 2020

County Administration Building, 100 W. Washington St., Meeting Room 2000, Hagerstown, at 6:00 p.m.

AGENDA

DOCKET NO. AP2020-011: An appeal made by Sharpsburg Pike Holding LLC for a variance from minimum 10 ft. side yard setback to 6.5 ft. for future construction of commercial building on property owned by the Appellant and located at 10319 Sharpsburg Pike, Hagerstown, zoned Highway Interchange. - **GRANTED**

DOCKET NO. AP2020-012: An appeal made by Jeanna Moats for a special exception to establish a doctor's office on property owned by Frederick & Susan Vollmer IV and located at 20021 Leitersburg Pike, Hagerstown, zoned Residential Transition. - **GRANTED**

DOCKET NO. AP2020-013: An appeal made by Huyetts Mennonite School Inc for a variance from minimum 25 ft. from the street right-of-way to 10 ft. for placement of freestanding sign for Horizon Mennonite School on property owned by the Appellant and located at 17000 Vision Way, Hagerstown, zoned Agricultural (Rural). - **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 Kathryn Rathvon at 240-313-2464 Voice, 240-313-2130 Voice/TDD no later than May 25, 2020. Any person desiring a stenographic transcript shall be responsible for supplying a competent stenographer.

Due to government regulations during the COVID-19 restriction, all hearing will take place virtually. Only the board members and the appellant(s) can appear in-person for the hearing. The general public will not be allowed to attend hearings until further notice. The general public who wish to give testimony towards a case is **strongly encouraged to do so by writing a letter or by sending an email to the following:**

Ashley Holloway, Zoning Administrator
80 W Baltimore St
Hagerstown, MD 21740
aholloway@washco-md.net

All letters and emails will be read during the hearing and placed on file as an official record of the case. If you would rather give a voice testimony and/or listen to the hearing, you can do so by teleconferencing. Using a phone, you can dial in at the scheduled time of the hearing to (301) 715-8592. When prompted use meeting ID code **936-5340-6468** and meeting password **185254**. You also have the option to participate via live video or watch the hearing live. Using a computer or smart phone, go online to www.zoom.us and use the same meeting ID number and meeting password to access the hearing. Again, you are strongly encouraged to submit your testimony by letter or email.

The Board of Zoning Appeals reserves the right to vary the order in which the cases are called. 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.

Paul Fulk, Chairman
Board of Zoning Appeals

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

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SHARPSBURG PIKE HOLDING, LLC * Appeal No.: AP2020-011

Appellant * *

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OPINION

Sharpsburg Pike Holding, LLC (hereinafter “Appellant”) requests a variance to reduce the minimum side yard setback from 10 feet to 6.5 feet for construction of a commercial building at the subject property. The subject property is located at 10319 Sharpsburg Pike, Hagerstown, Maryland 21740; is owned by the Appellant; and is zoned Highway Interchange, HI. The Board held a public hearing on the matter on May 27, 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 the subject property located at 10319 Sharpsburg Pike, Hagerstown, Maryland. The property is zoned Highway Interchange, HI, and is adjacent to the existing Teamsters Local Union No. 992 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. Appellant seeks to subdivide the subject property such that multiple lots are created for commercial pad site uses. The subject property is more specifically, proposed Lot 5 of the aforesaid subdivision.

3. Appellant has proposed a building that meets reasonable market demands for retail space, with several end-users in mind.

4. The subject property has a thirty (30) foot wide sewer easement running through the middle of proposed Lot 5, almost bisecting the property. The sewer easement was created by the construction of the Walmart property across Sharpsburg Pike.

5. The neighboring property most directly affected is the Teamsters Local Union No. 992.

6. The subject property is among several properties along Sharpsburg Pike that in the process of coordinated development for commercial and retail use. Some of these uses include Aldi, Dunkin Donuts and Taco Bell.

7. 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

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).

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 location of the thirty (30) foot sewer easement affects the subject property in a unique way. Given the restrictions on construction over the easement, its location dictates the design and location of buildings on Lot 5, and consequently on the other adjoining lots. Such constraints have required Appellant to seek this variance to relax the side yard setback requirements for proposed Lot 5.

The Board finds that the unique effect of the existing sewer easement imposes practical difficulty on Appellant. The easement bisects the proposed Lot 5, requiring location of the improvements toward the side yard to allow for parking areas over the easement. If Appellant were required to comply with the setback requirements, the building would have to be reconfigured or reduced in size, parking may have to be reduced and it may not allow for their to be three (3) viable lots from the subject property. This imposes significant limitations on the viability and marketability of the lots as independent commercial pad sites, similar to ones already in existence in the surrounding area along Sharpsburg Pike. Appellant is requesting to reduce the setback 3.5 feet, to locate the building closer to the side yard boundary line and allow for clear access to the existing sewer easement. Clearly, a lesser reduction is not necessary as noted in

Appellant's drawings and presentation. Requiring strict compliance would do substantial injustice to Appellant as it would result in a reconfiguration of all three lots, and likely reduce marketability for potential end users.

The requested variance relief supports the orderly development of property in the Highway Interchange zoning district, where commercial activities are to be conveniently located. It does not appear to affect the public safety or welfare except to the extent that it will accommodate the existing sewer easement which serves the area. The only real affected property owner is the Teamsters Local Union No. 992, and given the distance to their actual building, it is likely the 3.5 difference will not be noticed.

Accordingly, the request for a variance to reduce the side yard setback from 10 feet to 6.5 feet at the subject 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: June 25, 2020

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

JEANNA MOATS

Appellant

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Appeal No.: AP2020-012

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OPINION

Jeanna Moats (hereinafter “Appellant”) requests a special exception to establish a doctor’s office at the subject property. The subject property is located at 20021 Leitersburg Pike, Hagerstown, Maryland 21742; is owned by Frederick Vollmer, IV and Susan Vollmer; and is zoned Rural Transition, RT. The Board held a public hearing on the matter on May 27, 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 contract purchaser of the subject property located at 20021 Leitersburg Pike, Hagerstown, Maryland. The subject property is zoned Residential Transition, RT.
2. The subject property consists of a building with two levels, the second level

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being a walkout in the rear. It is situated in a mixed used area that has seen the development of various commercial and business uses over the years.

3. Appellant proposes to renovate the existing building and establish a medical office at the subject property.

4. Appellant's medical practice will be open during the week, Monday through Friday from 8:00 a.m. to 4:30 p.m., primarily serving a local Mennonite population. There will be no evening, weekend, or holiday hours. The practice will only have three (3) employees present at any one time and can only serve up to two (2) patients at any given time.

5. There is adequate parking for patients to the front of the building and employees will utilize the parking area to the rear, as well as the lower level walkout entrance.

6. The building was constructed and designed for commercial use. Appellant seeks to make some interior renovations in order to fit the needs of her medical practice.

7. There was no opposition presented to this appeal.

Rationale

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. Moreover, the Board must consider whether there are any "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).

In the instant case, the subject property looks like a commercial property and was intended for business use based on its design and marketing. Appellant is seeking to make it her office for a medical practice, serving 1-2 patients at a time. There is nothing inherent in the use itself that will produce any adverse effects like dust, gas, odor, noise, fumes, vibrations, glare, or light pollution onto the surrounding properties. In fact, the immediate "neighborhood" contains mixed uses such as a dental office, nursery, animal hospital and a construction office. The limited number of employees and patients assures that increased traffic and parking will not be an issue with the proposed use. The hours of operation are reasonable, and the use of the subject property will likely be unnoticeable to passersby and the surrounding properties. Appellant's proposed medical office will not have any greater adverse effects at this location than it would in another location in the zoning district.

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Accordingly, the request for a special exception to establish a doctor's office at the subject 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: June 25, 2020

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

HUYETTS MENNONITE SCHOOL, INC
Appellant

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Appeal No.: AP2020-013

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OPINION

Huyetts Mennonite School, Inc. (hereinafter “Appellant”) requests a variance to reduce the minimum street right-of-way setback from twenty-five (25) feet to ten (10) feet for construction of a freestanding sign at the subject property. The subject property is located at 17000 Vision Way, Hagerstown, Maryland 21740; is owned by the Appellant; and is zoned Agricultural, Rural, A(R). The Board held a public hearing on the matter on May 27, 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 the subject property located at 17000 Vision Way, Hagerstown, Maryland. The property is zoned Agricultural Rural, A(R) and consists of a school complex.

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2. The subject property was the subject of a previous variance request regarding density and lot size restrictions, in order to construct a school. Said variance requests were granted in AP2018-029.

3. Appellant proposes to construct a freestanding sign closer to the road.

4. The proposed sign would be a double face monument style sign with masonry piers, a planter base and coach lamps.

5. The proposed location of the freestanding sign does not restrict or impact sight lines for vehicles exiting the school property.

6. There is a tree line to the northwest of the entrance to the subject property, which disguises the property from oncoming traffic on Cearfoss Pike.

7. 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).)

The Board previously found the property to be unique given its size and shape as is related to the construction of a school. As a result of the location of the school building, and the topography which includes the tree line to the northwest, the subject property's unique characteristics create practical difficulty. The location for the sign as prescribed by the Ordinance pushes the sign significantly from the road and hidden by the tree line for oncoming traffic. Simply put, it will lose function if not located closer to the road. This is a new school facility with athletic fields and community use areas that people will be looking for as a destination. Having visible signage is crucial to the school functions and events, where those that are unfamiliar with the location can be guided there safely. The Board acknowledges the practical difficulty created by strict adherence to the Ordinance setback requirements and finds that they should be relaxed to allow a reasonable and appropriate relocation of Appellant's monument sign.

Accordingly, the request for a variance to reduce street right-of-way setback from twenty-five (25) feet to ten (10) feet for construction of a freestanding sign at the subject 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: June 25, 2020