

BOARD OF APPEALS
June 10, 2020 6:00 p.m.

AGENDA

DOCKET NO. AP2020-014: An appeal made by Meadow Rail Inc. for a variance from the 100 ft. minimum building setback to 67 ft. along the front yard or common line with 13103 Maugansville Road for the construction of building to be used for animal husbandry on property owned by the Appellant and located at 13107 Maugansville Road, Hagerstown, zoned Industrial General. - **GRANTED**

DOCKET NO. AP2020-015: An appeal made by John & Lisa Halteman for a special exception to bring site into compliance for moderate volume mineral extraction operation, variance from the minimum 100 ft. right side yard setback to 25 ft. for mineral extraction operation on property owned by the Appellant and located at 12635 Flying Duck Lane, Clear Spring, zoned Agriculture (Rural). - **GRANTED**

DOCKET NO. AP2020-016: An appeal made by Taylor Farm I LLC for a variance from minimum of 656 parking space requirement to 492 parking spaces for construction of warehouse on property owned by the Appellant and located at North Side of Wright Road and West of Hopewell Road, Williamsport, zoned Industrial General.- **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 June 1, 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**

MEADOW RAIL, INC
Appellant

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Appeal No.: AP2020-014

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OPINION

Meadow Rail, Inc. (hereinafter “Appellant”) requests a variance to reduce the required minimum front yard setback from 100 feet to 67 feet in order to construct a building for animal husbandry at the subject property. The subject property is located at 13107 Maugansville Road, Hagerstown, Maryland 21740; is owned by the Appellant; and is zoned Industrial General, IG. The Board held a public hearing on the matter on June 10, 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, which is located at 13107 Maugansville Road, Hagerstown, Maryland. The subject property is zoned Industrial General, IG.

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 bounded on the north by property owned by James and Wilma Martin and to the west by property owned by Wendy and Elson Martin. Wendy Martin is the daughter of James and Wilma Martin.

3. Wendy and Elson Martin have a disabled child who derives therapeutic benefit from working with animals and participates in 4H.

4. The subject property is rectangular in shape with a portion cut out of the western half which comprises the lands owned by Wendy and Elson Martin.

5. Appellant proposes to construct a 30-foot by 40-foot monitor barn for housing animals to us in therapy and for 4H purposes.

6. The barn would be situated at the intersection of the existing driveways which bisect the subject property. This area contains a large flat surface and is located in proximity to the Martin's home.

7. The monitor barn is a prefabricated building that can be removed from the subject property if necessary in the future.

8. The Washington County Humane Society owns the property immediately to the south of the subject property and has indicated its support for the variance request.

9. 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

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).

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 is oddly shaped due to the cut out for the neighboring family property. Ironically, the neighboring property is the one which benefit most from the proposed barn construction and the most affected by the variance request. It is clear that the barn could be located in other areas of the property without the need for a variance, but it would defeat the purpose to house animals for therapy and 4H, if it were not easily accessible from the Martin property. Moreover, the proposed location is a large flat area that is particularly suited for building a barn. In this circumstance, strict compliance would result in extreme practical difficulty and undermine the purpose of the proposed use.

Accordingly, the request for a variance to reduce the required minimum front yard setback from 100 feet to 67 feet in order to construct a building for animal husbandry 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: July 9, 2020

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

JOHN & LISA HALTEMAN
Appellant

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Appeal No.: AP2020-015

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OPINION

John and Lisa Halteman (hereinafter collectively “Appellants”) request a special exception for a moderate volume mineral extraction operation and a variance to reduce the minimum required side yard setback from 100 feet to 25 feet for said operation. The subject property is located at 12635 Flying Duck Lane, Clear Spring, Maryland 21722; is owned by Appellants; and is zoned Agricultural, Rural, A(R). The Board held a public hearing on the matter on June 10, 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. Appellants are the owner of the subject property located at 12635 Flying Duck Lane, Clear Spring, Maryland. The subject property is zoned Agricultural, Rural, A(R).

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. Appellants own approximately fifty (50) acres, with the mining operation occupying approximately three (3) acres. The extraction area is close to the neighboring property.

3. For several decades, Appellants have operated a mineral extraction operation, mining shale for purchase at the subject property.

4. The subject property is also operated as an active, working farm.

5. Mineral extraction is done on as-needed basis and is not a daily activity at the subject property.

6. Appellants permit only one (1) person to perform mining and extraction at the subject property.

7. Appellants have filed this appeal to obtain a permit so that the operation complies with the Zoning Ordinance.

8. Adjacent property owners St. Paul's Church and Vincent and Tami Gesiskie have indicated they do not have concerns about the operation. Mr. Gesiskie was a signatory to a letter in support of the zoning requests.

9. The mineral extraction site is located approximately 1200 feet from National Pike and approximately 1000 feet from St. Paul's Road.

10. There was no opposition presented to this appeal.

Rationale

Special Exception Request

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 Board is asked to consider an already existing mineral extraction operation in an effort to comply with the current Zoning Ordinance which requires special exception approval. The Board first notes that the use has been in existence for the better part of four (4) decades, without coming to the attention of the surrounding neighborhood or county officials. The mere existence for that long without an issue tends to suggest that there are no adverse impacts that would be greater at this location. While there is dust and noise from the operation, the mineral extraction area is a minimum of 1000 feet from both nearby roadways, and substantial distances from the neighboring residences. In addition, the extraction is done on as-needed basis and is not a constant, daily operation; thus the intensity is low to moderate in terms of equipment operation, truck traffic, noise, and dust. The Board finds that the adverse effects are not above and beyond those inherently associated with mineral extraction regardless of the location in the zoning district. The special exception to establish a moderate volume mineral extraction 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. ² “Practical Difficulty” may be found by 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).

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 this case, the subject property is irregularly shaped and has been mined for approximately four (4) decades without issue. The extraction area has necessarily run the operation close to the neighboring property. To require strict compliance to 100 feet now would cause extreme hardship on Appellants. They would have to restructure the extraction area, fill in and move extraction to another area of the property. All of this would be a drastic departure from their existing mining plan, which has not caused any issues or produced concerns in its time in existence. The variance is not only the minimum necessary from a site measurement standpoint, it is the minimum necessary to avoid hardship and undue burden on Appellants. The variance to reduce the setback should be granted.

Accordingly, the request for a special exception to establish a moderate volume mineral extraction operation at the subject property is hereby GRANTED, by a vote of 5-

0. The variance to reduce the minimum required side yard setback from 100 feet to 25 feet for a moderate volume mineral extraction operation at the subject property is hereby GRANTED, by a vote of 5-0. Both the special exception and the variance relief are 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: July 9, 2020

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

TAYLOR FARM I, LLC
Appellant

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Appeal No.: AP2020-016

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OPINION

Taylor Farm I, LLC (hereinafter “Appellant”) requests a variance to reduce the required minimum parking spaces from 656 to 492 parking spaces at the subject property. The subject property is located at north side of Wright Road and west of Hopewell Road, Hagerstown, Maryland 21740, more particularly identified at Parcel 57, on Tax Map 48, Grid 21; is owned by the Appellant; and is zoned Industrial General, IG. The Board held a public hearing on the matter on June 10, 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 north side of Wright Road and west of Hopewell Road, Hagerstown, Maryland 21740, more particularly identified at Parcel 57, on Tax Map 48, Grid 21. The subject property is zoned Industrial General,

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.

IG.

2. The subject property was previously zoned residential and was rezoned to Industrial General.

3. The County plans to re-align Wright Road which will require dedication of approximately one-third of the subject property.

4. Appellant proposes to develop the subject property for a warehouse/distribution operation which is a principally permitted use in the zoning district.

5. Based on the square footage of the proposed building, the Zoning Ordinance requires 656 parking spaces.

6. The potential end user for the subject property plans to have no more than 207 total employees on any given shift working in the facility. The warehouse/distribution industry has become increasingly more computerized and technologically advanced, resulting in the need for fewer employees.

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

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).

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, there are two factors making the property unique. First, the County will be taking a large portion of the developable area to create the planned re-alignment of Wright Road. The result is that the subject property loses approximately one-third of its area for development. Second, the dedication of lands for Wright Road results in an irregularly shaped property. These factors combine to create a practical difficulty when applied to the strict requirements of the Zoning Ordinance.

The record is clear that the proposed use will need far less than the required parking spaces and while they can re-design the site to include additional parking, it is unnecessary. Moreover, additional parking will eliminate green space and increase impervious surface areas, having a detrimental effect on the surrounding environment. Even if the potential end user were to have all three (3) shifts of employees present at the facility simultaneously, the minimum required parking spaces would exceed the number actually needed. This is proof positive that the requirement is arbitrary and in need of relaxation to provide for the orderly development of the subject property. Strict compliance would result in an environmentally offensive site, a possible reduction in

building footprint and detrimentally effect the marketability of the property. The variance relief requested is necessary to avoid these negative effects and upholds the spirit and intent of the Ordinance.

Accordingly, the request for a variance to reduce the required minimum parking spaces from 656 to 492 parking spaces 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: July 9, 2020