

BOARD OF APPEALS
August 19, 2020 6:00 p.m.

AGENDA

DOCKET NO. AP2020-020: An appeal made by Wade & Charlotte Burkholder for a variance from the 100 ft. minimum building setback to 77 ft. from rear property line for 14'x14' building to be used for animal husbandry on property owned by the Appellant and located at 15530 Mobile Road, Williamsport, zoned Agricultural, Rural. - **GRANTED**

DOCKET NO. AP2020-021: An appeal made by Cedar Valley Plaza LLC for a special exception to establish a temporary drive-in cinema on property owned by the Appellant and located at 1713 Massey Boulevard, Hagerstown, zoned Business, General District. - **GRANTED WITH CONDITIONS**

DOCKET NO. AP2020-022: An appeal made by Patrick & Jennifer Plumadore for a variance from the 15 ft. minimum side yard setback to 2 ft. from right side property line for construction of 22'x24' detached garage on property owned by the Appellant and located at 19919 Thacker Drive, Boonsboro, zoned Preservation. - **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 August 10, 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**

WADE AND CHARLOTTE BURKHOLDER
Appellants

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Appeal No.: AP2020-020

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OPINION

Wade and Charlotte Burkholder (hereinafter “Appellants”) request a variance to reduce the rear yard setback from one hundred (100) feet to eighty (80)¹ feet for an animal husbandry building at the subject property. The subject property is located at 15530 Mobile Road, Williamsport, Maryland 21795; is owned by the Appellants; and is zoned Agriculture, Rural A(R). The Board held a public hearing on the matter on August 19, 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. Appellants own and reside at the subject property located at 15530 Mobile Road, Williamsport, Maryland. The property is zoned Agriculture, Rural A(R).

¹ Appellants’ original request was for 76 feet, however a survey was performed and found that the existing building was 80 feet from the rear property line.

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.

2. Appellants purchased the subject property in 2009 and have not made any changes to the boundary lines, shape or otherwise caused changes in the topography.

3. Appellants constructed a 14' by 14' building with concrete footers to the rear of the residence on the subject property. The intention was to utilize the building for animal husbandry, specifically raising chickens.

4. Appellants' closest neighbor is several hundred feet away and across the street from the subject property.

5. Appellants had already poured the concrete footers and commenced substantial construction when they discovered the location issue. They promptly followed up by seeking this variance.

6. Frederick, Seibert & Associates conducted a survey and established that the poultry building is eighty (80) feet from the rear property line.

7. The subject property is in a remote area and surrounded by woodlands.

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. ³ "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

³ "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 subject property is in a secluded area, surrounded by woodlands and with significant distance between neighbors. They reside in an Agricultural zoning district, which supports the existence of farm operations and animal husbandry activities. While we appreciate the purpose behind requiring such a large setback, the practical application to the subject property renders conformance burdensome. Putting aside the fact that Appellants had already begun construction, it is both reasonable and practical that such a building would be located as close to the rear of the property as possible. Moving it now would cause great hardship and would only serve to locate the building closer to their residence. This would result in practical difficulty and impose a burden not experienced by other properties in the surrounding neighborhood. Given the distance between Appellants and their closest neighbors, it is extremely unlikely that the location of the building would have any detrimental effect. Under the circumstances, the variance request is consistent with the fundamental tenets and spirit of the Ordinance.

Accordingly, the request for a variance to reduce the rear yard setback from one hundred (100) feet to eighty (80) feet for an animal husbandry building 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: September 17, 2020

Notice of Appeal Rights

Any party aggrieved by a final order of the Authority in a contested case, whether such decision is affirmative or negative in form, is entitled to file a petition for judicial review of that order to the Circuit Court for Washington County within thirty (30) days of the date of the order.

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

CEDAR VALLEY PLAZA, LLC

Appellants

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Appeal No.: AP2020-021

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OPINION

Cedar Valley Plaza, LLC (hereinafter “Appellant”) applies for a special exception to establish a temporary drive-in cinema at the subject property. The subject property is located at 1713 Massey Boulevard, Hagerstown, Maryland 21740; is owned by the Appellants; and is zoned Business General, BG. The Board held a public hearing on the matter on August 19, 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 manages the subject property located at 1713 Massey Boulevard, Hagerstown, Maryland. The property is zoned Business General, BG.
2. The subject property is known as Valley Plaza and consists of strip of retail stores including the Ollie’s Bargain Outlet, Tractor Supply, and the former Kmart

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.

building, as well as several fast-food restaurants. There is a large parking area in front of the former Kmart building.

3. Appellant proposes to establish a temporary or seasonal drive-in cinema operation in the parking area directly in front of the former Kmart building. Appellant would be partnering with Kilburn Media to operate the cinema.

4. The cinema operation would have a 47' by 30' screen which would face north towards 120 parking spaces which would be designated for viewing. There would be cones and parking attendants to direct parking and traffic before and after showings.

5. Tickets for movies would be purchased online and attendees would receive the audio feed through a particular channel on their vehicle radio. There would not be any exterior speakers. There would be one (1) movie per night of operation, to begin approximately twenty (20) minutes after sundown.

6. There will be no food sales at the subject property, however Appellant is looking to partner with and collaborate with local restaurants.

7. The cinema operation will have portable toilets on site for attendees to use.

8. Appellant plans to operate the drive-in cinema until November and perhaps return in the spring if successful. All physical aspects of the cinema operation will be temporary and can be easily taken down and removed.

9. The Board received one (1) opposition letter regarding possible noise, interference with business operations and concern for distraction to motorists on Wesel Boulevard.

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, Appellant proposes to make temporary or seasonal use of space at the subject property that is sitting vacant. There will be no dust, noise, gas, or odor emanating from the site and the greatest impact will be the presence of cars in the otherwise typically vacant parking lot. Appellant has a plan for traffic flow and safety and has taken measures to limit any light or noise pollution onto other properties. The subject property is an ideal location for a drive-in cinema and as such, does not create any adverse effects greater than other locations in the zoning district. If anything, the subject property tends to mitigate some of those effects given its size, location, and the proposed layout.

To ensure that any such effects remain minimized, the Board believes that imposing certain conditions is appropriate. First, the standard condition that the use be consistent with the testimony and evidence presented to the Board should be adopted. In addition, there should be a limitation on the size of the screen so as to limit expansion without further review.

Accordingly, the request for a special exception to establish a temporary drive-in cinema 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. The application is further granted upon the condition that the movie screen be no larger than forty-seven (47) feet by thirty (30) feet.

BOARD OF APPEALS

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

PATRICK AND JENNIFER PLUMADORE

Appellants

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Appeal No.: AP2020-022

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OPINION

Patrick and Jennifer Plumadore (hereinafter "Appellants") request a variance to reduce the side yard setback from fifteen (15) feet to two (2) feet for construction of a 22' by 24' detached garage at the subject property. The subject property is located at 19919 Thacker Drive, Boonsboro, Maryland 21713; is owned by the Appellants; and is zoned Preservation. The Board held a public hearing on the matter on August 19, 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 own and reside at the subject property located at 19919 Thacker Drive, Boonsboro, Maryland. The property is zoned Preservation.
2. Appellants purchased the subject property approximately five (5) years ago and have not made any changes to the shape of the lot, boundary locations or the nature

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.

of the topography.

3. Appellant proposes to construct a 22' by 24' detached garage at the end of his driveway.

4. There are other properties in the immediate surrounding neighborhood that have detached garages serving the end of driveways and access lanes.

5. There is a five hundred (500) gallon underground fuel tank located perpendicular to the residence near the driveway.

6. The subject property has considerable rock, particularly in the front yard and along the area where the driveway leads to the home.

7. The existing driveway extends approximately 330 feet from the road and turns right into an existing attached garage area.

8. The septic area also occupies a substantial portion to the front of the residence.

9. Appellants discussed the proposed construction with the closet neighbor who indicated no opposition.

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)

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).

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 limited by the shape of the lot, location of the driveway, prevalent rock, and the location of the underground fuel tank. The location of the rock and fuel tank mandates that Appellants cannot simply extend the garage area from the existing home and attached garage. The only option that would not require a variance is to locate the garage on the other side of the home. However, this would require significant redesign of the interior of the home and construct of a driveway across the front of the home and through the septic area. This would be an extreme hardship and costly and is not reasonable under the circumstances.

Appellants have chosen the only realist location for the detached garage, which they are constructing to line up with the existing driveway. If they were to comply with the Ordinance setback requirements, they would only be able to construct a small garage, thus restricting a reasonable use that other surrounding properties enjoy the benefit of. Furthermore, forcing construction on the other side of the home is unduly and unreasonably burdensome and expensive. Based on both practical difficulty and undue

hardship, Appellants have established the criteria necessary for variance relief and their request should be granted.

Accordingly, the request for a variance to reduce the side yard setback from fifteen (15) feet to two (2) feet for construction of a 22' by 24' detached garage 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.

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