

BOARD OF APPEALS
September 2, 2020 6:00 p.m.

AGENDA

DOCKET NO. AP2020-023: An appeal was made by Berbard R, Kefauver Jr. & Sondra K. Riggs for a special exception to establish a gunsmithing/gun repair shop as a resident business in an existing accessory structure on property owned by the Appellant and located at 546 Prospect Hill Road, Knoxville, zoned Environmental Conservation. **-POSTPONED**

DOCKET NO. AP2020-024: An appeal was made by Northpaws Properties LLC for a variance from the 50 ft. minimum building setback to 35 ft. for side property line and 10 ft. for rear property line for proposed building expansion on property owned by the Appellant and located at 21257 Leitersburg Pike, Hagerstown, zoned Rural Business. **-GRANTED**

DOCKET NO. AP2020-025: An appeal was made by Allen & Edith Myers for a variance from the 50 ft. minimum building setback to 2 ft. from front property line, 2 ft. from (south) side property line, and 25 ft. from (north) side property line for placement of mobile storage building models on property owned by the Appellant and located at 2212 Rohrersville Road, Knoxville, zoned Environmental Conservation. **-DENIED**

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 24, 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**

NORTHPAWS PROPERTIES, LLC

Appellants

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Appeal No.: AP2020-024

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OPINION

Northpaws Properties, LLC (hereinafter “Appellant”) requests a variance to reduce the side yard setback from fifty (50) feet to thirty-five (35) feet and to reduce the rear yard setback from fifty (50) feet to ten (10) feet for a proposed building expansion at the subject property. The subject property is located at 21257 Leitersburg Pike, Hagerstown, Maryland 21742; is owned by the Appellant; and is zoned Rural Village, RV. The Board held a public hearing on the matter on September 2, 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 21257 Leitersburg Pike, Hagerstown, Maryland. The property is zoned Rural Village, RV.
2. The subject property consists of a commercial building which houses

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.

Northpaws Animal Hospital and was the previous site for Meadow Creek Antiques and Uniques. The original building pre-dates the adoption of the Zoning Ordinance.

3. Northpaws began using the subject property in 2017.

4. In Case No. AP2017-011, the Board of Appeals granted a variance from the side yard setback for a small addition to the building for an equipment room.

5. Appellant proposes to construct a two-story addition consisting of 930 square feet per floor and located to the rear of the existing building. The additional space would be used for exam rooms, a lab area and storage.

6. The subject property is oddly shaped, resulting in an exceedingly small buildable area within the Ordinance-imposed setbacks. The original building does not even fit within the setback requirements.

7. Appellant is unable to expand to the side of the building due to the lack of area for a meaningful addition. Appellant cannot expand to the front of the building because it would affect traffic flow in and out of the subject property.

8. The rear area of the building contains empty parking lot area and the dumpsters which service the business.

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.)

The subject property is an irregularly shaped lot that looks like the result of combining several shapes together. In observing the building setback lines, the subject property is left with a small buildable area. In fact, the existing building exceeds the setback lines on all sides because it was constructed before the setbacks were applied to the property. This results in practical difficulty as any addition or alteration to the building footprint is likely to run afoul of the building setback requirements. Appellant has proposed a reasonable addition to the building in the only possible location, which if located elsewhere in the zoning district, may not need variance relief. The shape of the lot and positioning of the building make the requested variances necessary to construct the proposed expansion. Moreover, requiring strict compliance with the setback requirements would bar any meaningful expansion or modification of the existing building. The variance relief should be afforded to Appellant so that it can continue to improve the use and operation of the subject property, consistent with the spirit and

purpose of the Zoning Ordinance.

Accordingly, the request for a variance to reduce the side yard setback from fifty (50) feet to thirty-five (35) feet and to reduce the rear yard setback from fifty (50) feet to ten (10) feet for a proposed building expansion 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 30, 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**

ALLEN AND EDITH MYERS

Appellants

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Appeal No.: AP2020-025

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OPINION

Allen and Edith Myers (hereinafter “Appellants”) request variances to reduce the front yard setback from fifty (50) feet to two (2) feet, to reduce the south side yard setback from fifty (50) feet to two (2) feet and the north side yard setback from fifty (50) feet to twenty-five (25) feet for placement of mobile storage building models at the subject property. The subject property is located at 2212 Rohrersville Road, Knoxville, Maryland 21758; is owned by the Appellants; and is zoned Environmental Conservation, EC. The Board held a public hearing on the matter on September 2, 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 the subject property located at 2212 Rohrersville Road, Knoxville, Maryland. The property is zoned Environmental Conservation, EC.

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 a flag-shaped lot consisting of approximately nine (9) acres which extends in a long narrow portion (the flagpole) to Rohrersville Road. The larger area (the flag) consists of Appellants' residence and a separate building that houses Myers Barn Shop.

3. On March 21, 1991, Appellants were granted a special exception to establish a mini-barn storage shed manufacturing business known as Myers Barn Shop, at the subject property. The Board of Appeals issued a written opinion in Case No. AP-2518.

4. Appellants' son, Dave Myers operates Myers Barn Shop at the subject property. The business has operated continuously since obtaining zoning approval in 1991.

5. During the hearing before the Board of Appeals in 1991, Appellants' neighbor, Franklin Kelbaugh opposed the special exception because of the placement of a display playhouse close to Rohrersville Road. Allen Myers agreed at that time to remove the display playhouse and the Board of Appeals granted the special exception.

6. Myers Barn Shop has recently placed two (2) small storage shed buildings at the end of the driveway to the subject property, close to Rohrersville Road. Franklin Kelbaugh has objected to their location.

7. Myers Barn Shop has a small sign affixed to the mailbox that is visible to traffic on Rohrersville Road.

8. The business occasionally gets customers stopping to look at the displays and ask questions. The business has had customers complain that they cannot find the business.

9. Appellants set down a gravel base large enough for two (2) mobile storage buildings to be remain placed along Rohrersville Road.

10. Appellants have had mobile storage building models set out as displays to

passing traffic at various periods of time for the past twenty-nine (29) years.

11. Appellants are seeking variance relief in order to display models which are 10' by 16', or smaller, and prefer to have two (2) models in the location proposed.

12. Appellants contacted their neighbors immediately to the south who indicated they had no objection to the variance request or placement of display storage buildings at the subject property.

13. Franklin Kelbaugh note his objection to the variance request and testified during the hearing.

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

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).

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).)

David Myers presented Appellants' case at the hearing in this matter. Mr. Myers testified that while he was aware of the condition imposed in the Board's 1991 opinion, he has placed storage building models in this location, off and on for the last twenty-nine (29) years. He stated his desire to get zoning approval so that he can continue to place the buildings in close proximity to Rohrersville Road legally and without complaints. Mr. Myers testified that he needed to place the storage buildings in the proposed location in order to announce the business and to assist customers in finding the business.

Franklin Kelbaugh opposed the variance request just as he opposed the special exception request in 1991. He testified that the Appellants have repeatedly violated the condition of the special exception approval and that the condition should be imposed. Mr. Kelbaugh described instances in which cars have stopped along the shoulder of Rohrersville Road to look at the display models and that he has observed Appellants conducting business on the side of the road. Mr. Kelbaugh further testified that the storage building models should be moved further back from the road and that there is only a need to have one (1) building on display.

Mr. Myers provided little evidence to support the variance request. Although he testified regarding the need to make the business more visible to customers and passing vehicles, he failed to demonstrate how this posed created practical difficulty or hardship. The Board did not hear evidence that the absence of the requested variance relief would prevent a reasonable return from the property. Appellants are not prevented from making reasonable use of the property for a permitted purpose, namely Myers Barn Shop. Moreover, Appellants agreed to refrain from placing display models in the proposed

location in order to get the approval to operate said business. They have operated for twenty-nine (29) years, and notwithstanding instances in which the condition may have been violated, they have operated with the knowledge that they were not permitted to locate display models at the end of their access lane, near Rohrersville Road. Furthermore, Appellants did not provide any testimony or evidence to demonstrate substantial injustice resulting from the imposition of the setback requirements.

Appellants' presentation focused on the need to market their business, the fact that the 1991 condition is now antiquated, and the fact that the buildings had been placed there at various times anyway. The thrust of Appellants' case was that Myers Barn Shop was a well-respected business operated by a well-respected family in the community. While commendable, such characteristics are irrelevant when considering whether to permit the use of property in a manner contrary to the limitations set forth through legislative prerogative. Moreover, when presented with the option of only one (1) display model, which would reduce the variance relief needed, Mr. Myers remained steadfast in his preference for have two (2) display models. Appellants did not address the variance criteria as set forth in the Zoning Ordinance and did not produce sufficient evidence for the Board to make findings as to practical difficulty or undue hardship. As a result, the Board does not find sufficient evidence to justify granting the requested variance relief.

Accordingly, the requests for variances to reduce the front yard setback from fifty (50) feet to two (2) feet, to reduce the south side yard setback from fifty (50) feet to two (2) feet and the north side yard setback from fifty (50) feet to twenty-five (25) feet for placement of mobile storage building models at the subject property is hereby DENIED, by a vote of 4-1. 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: October 1, 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.