

BOARD OF APPEALS
September 16, 2020 6:00 p.m.

AGENDA

DOCKET NO. AP2020-026: An appeal was made by St. James Brethern Trustees for a variance from the required 25 ft. from street right-of-way to 10 ft. for freestanding sign support structure on property owned by the Appellant and located at 17718 Lappans Road, Fairplay, 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 September 7, 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**

**ST. JAMES BRETHERN CHURCH
TRUSTEES
Appellant**

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Appeal No.: AP2020-026

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OPINION

St. James Brethren Church Trustees (collectively hereinafter “Appellant”) requests a variance to reduce the required setback from the street right-of-way for a freestanding sign from twenty-five (25) feet to ten (10) feet at the subject property. The subject property is located at 17718 Lappans Road, Fairplay, Maryland 21733; is owned by the Appellant; and is zoned Agricultural, Rural. The Board held a public hearing on the matter on September 16, 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 17718 Lappans Road, Fairplay, Maryland. The property is zoned Agricultural, Rural.

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 consists of a large church, gymnasium, parsonage, and parking area. It is located along Lappans Road in a residential area.

3. The subject property is subject to a 50-foot right-of-way from the roadway for the benefit of the State of Maryland.

4. Appellant has an existing directional sign at the western corner of the property at the entrance to the parking lot.

5. Appellant proposes to construct a freestanding digital sign in front of the church building. The sign would be approximately 7'7" wide and 3'11" tall and would provide continuous information and messaging to the community and passersby.

6. The proposed sign will be located 10 feet from the right-of-way and 60 feet from the roadway. The church building is located approximately 82 feet from the roadway.

7. The State Highway Administration has reviewed the request and provided its approval.

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

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.)

The subject property is perched at the crest of a hill among residences along Lappans Road. The church has existed for many years and was constructed approximately eighty-two (82) feet from Lappans Road. When one factors in the fifty (50) foot right-of-way, there remains only thirty-two (32) feet to the church building. The sign is necessary to provide information to the community about church and community activities. The Board notes that in addition to the church sanctuary, there is a gymnasium that is used by various youth sports and community programs. The proposed sign would enhance the ability to communicate with those groups as well. To that end, it is crucial to the sign’s purpose that it be visible to the public. If Appellant were to comply with the standard setback requirement, the new sign would be located very close to the building, approximately seventy-five (75) feet from the road. Thus, strict adherence to the setback requirements creates a practical difficulty for signage. The variance relief should be afforded to Appellant so that it can continue to improve the use and operation of the subject property for its parishioners and the community as a whole, consistent with the spirit and purpose of the Zoning Ordinance.

Accordingly, the request for a variance to reduce the required setback from the street right-of-way for a freestanding sign from twenty-five (25) feet to ten (10) 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: Jay Miller, Acting Chair

Date Issued: October 15, 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.