

**BOARD OF APPEALS**  
**September 30, 2020 6:00 p.m.**

**AGENDA**

**DOCKET NO. AP2020-027:** An appeal was made by Sean Jernigan for a variance from the 50 ft. minimum building setback to 40 ft. from front property line for construction of proposed 30'x 60' equipment storage shed, and a variance from the 100 ft. minimum building setback to 51 ft. from side property line and 97 ft. from front property line for construction of proposed 40' x 30 ' barn for animal husbandry on property owned by the Appellant and located at directly north of 12514 Beard Spur Road, Smithburg, zoned Agricultural (Rural). 6:00 pm. **-GRANTED**

**DOCKET NO. AP2020-028:** An appeal was made by Donald L. Hoffman Family Trust for a special exception for an underground sewage pumping station and associated equipment; variance from 20,000 sq. ft. lot area to 4,500 sq. ft., variance from 100 ft. lot width to 60 ft., variance from 25 ft. right side yard setback to 10 ft., variance from 50 ft. rear yard setback to 8 ft. for pump station and equipment on property owned by the Appellant and located at 13240 Cearfoss Pike, Hagerstown, zoned Residential, Transition. 6:30 pm. **-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 21, 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](http://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**

**SEAN JERNIGAN**

**Appellant**

**Appeal No.: AP2020-027**

\*  
\*  
\*  
\*

\*   \*   \*   \*   \*   \*   \*   \*   \*   \*   \*   \*

**OPINION**

Sean Jernigan (hereinafter "Appellant") requests a variance to reduce the front yard setback from 50 feet to 40 feet to construct an equipment storage shed, and variances to reduce the side yard setback from 100 feet to 51 feet and to reduce the front yard setback to 97 feet for a proposed animal husbandry barn at the subject property. The subject property is located at 12514 Beard Spur Road, Smithsburg, Maryland; is owned by the Appellant; and is zoned Agricultural, Rural A(R). The Board held a public hearing on the matter on September 30, 2020.<sup>1</sup>

**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 12514 Beard Spur Road, Maryland and more particularly identified as Parcel 329 on Tax Map 39, Grid 13 and

---

<sup>1</sup> 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.

known as the Remaining Lands on Plat Folio 4604. The property is zoned Agricultural, Rural.

2. The subject property consists of approximately 5.362 acres of rocky, hilly farmland with several buildings in various states of disrepair. The lot is irregularly shaped and has one narrow side and one wide side.

3. Appellant proposed to construct a 30 x 60 equipment storage shed and a 40 x 30 barn, moving them to a more centralized location on the property. He needs the storage shed for his equipment and the barn to use as a shelter for his cattle.

4. The proposed area for the barn is level and dry and will avoid the wear and tear experienced with the existing building.

5. Appellant resides in the dwelling the exists on the adjoining parcel of land.

6. 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.<sup>2</sup> "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.

---

<sup>2</sup> "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).



“‘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 exists as the remaining lands of a subdivision that created Appellant’s homestead tract. Appellant is in fact the most impacted neighbor as the variance requests either impede to his property or Beard Spur Road. Appellant is attempting to repair and improve rundown farm structures, and to make them more centrally located for ease of use and security. The proposed buildings are reasonable and necessary for his intended use to store equipment and provide shelter to his cattle. 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 buildings and improve the subject property. Moreover, requiring strict compliance with the setback requirements would bar a common sense and orderly improvement of the existing structures which are in disrepair. 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 front yard setback from 50 feet to 40 feet to construct an equipment storage shed, and variances to reduce the side yard setback from 100 feet to 51 feet and to reduce the front yard setback to 97 feet for a proposed animal husbandry barn at the subject property, are 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: October 29, 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**

\*

**DONALD L. HOFFMAN FAMILY  
TRUST**

\*

**Appeal No.: AP2020-028**

\*

**Appellants**

\*

\*

\*   \*   \*   \*   \*   \*   \*   \*   \*   \*   \*   \*

**OPINION**

The Donald L. Hoffman Family Trust (hereinafter “Appellant”) requests a special exception to establish an underground sewage pumping station and associated equipment, as well as variances to reduce the minimum lot area from 20,000 square feet to 4,500 square feet, to reduce the lot width from 100 feet to 60 feet, to reduce the right side yard setback from 25 feet to 10 feet and to reduce the rear yard setback from 50 feet to 8 feet at the subject property located at 13240 Cearfoss Pike, Hagerstown, Maryland. The subject property is owned by Donald L. Hoffman Family Trust and is zoned Residential Transition (RT). The Board held a public hearing on the matter on September 30, 2020.<sup>1</sup>

---

<sup>1</sup> 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.

## **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 owner of the subject property, located at 13240 Cearfoss Pike, Hagerstown, Maryland. The subject property is zoned Residential Transition (RT).

2. The subject property consists of unimproved lands bounded to the north by crop fields and to the south by cattle farming lands. There are no neighbors in the relative vicinity of the proposed project site.

3. Appellant proposes to subdivide land to create the subject property and to construct an underground sewage pumping station with associated equipment.

4. There is an existing pumping station which is located within the Maugans Meadows subdivision and for which the proposed station would replace. The existing station will be demolished, and the remaining land sold to the adjoining property owners.

5. The proposed pumping station would reduce the costs of services to nearby residents and would divert flow from the City of Hagerstown to the Conococheague Treatment facility.

6. The dimensions proposed for the subject property are consistent with the size and dimensions of other pumping stations throughout the County.

7. This project was presented for zoning approval to the Board in June 2019 by the Washington County Department of Water Quality, however intended for a different property at that time. The Board granted the special exception and variance requests, but the project fell through for other reasons.

8. There was no opposition presented for this appeal.

## **Rationale**

### ***Special Exception***

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. In the instant case, the Board is called upon to consider a special exception request to allow an underground pumping station on vacant, unimproved land in order to replace an existing pumping station which is located among dense residential development. The pumping station would have little adverse impact on the surrounding properties but great benefit. It would improve sewage pumping in the area, diverting flow to the Conococheague treatment plant rather than the City of Hagerstown. In addition, it would remove the existing pumping station from the residential area.

The Board finds that the proposed use at the subject property will have no greater “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). For all these reasons, we conclude that this appeal meets the criteria for a special exception and secures public safety and welfare and upholds the spirit of the Ordinance.

Accordingly, the request for a special exception to establish an underground sewage pumping station at the subject property is hereby GRANTED, by a vote of 5–0.

### ***Variances***

This Board has authority to grant a variance upon a showing of practical difficulty



or undue hardship. §§ 25.2(c) and 25.56. <sup>2</sup> “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). “‘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, Appellant is seeking to make use of a small portion of the subject property, necessary for its purpose. The dimensional variances requested are designed to give Appellant just enough property to construct and maintain the underground sewage pumping station, while leaving the remaining lands unencumbered to be used by the owner. The proposed size of the subdivided parcel is consistent with many of the other pumping stations in the County, which are small and attempt to efficiently use space to achieve their purpose. To impose the standard dimensional requirements on such a use, which is vital although not defined as essential, would be to frustrate the County’s ability to provide necessary services effectively and efficiently to the citizens. Moreover, the proposed project will result in cost savings to

---

<sup>2</sup> “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).

residents and reduce the impact on capacity issues currently experienced by the City of Hagerstown.

For the reasons stated above the Board finds that the relaxation of the bulk dimensional requirements affords Appellant the necessary relief and avoids the unreasonable and unfair result of limiting what is otherwise a use permitted by special exception at the subject property. Therefore, the Board concludes that the granting the various requests for variance relief alleviates the practical difficulty and undue hardship to Appellant, secures public safety and welfare, and upholds the spirit of the Ordinance.

Accordingly, the request for variances to reduce the minimum lot area from 20,000 square feet to 4,500 square feet, to reduce the lot width from 100 feet to 60 feet, to reduce the right side yard setback from 25 feet to 10 feet and to reduce the rear yard setback from 50 feet to 8 feet at the subject property are all hereby GRANTED by a vote of 5-0.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: October 29, 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.