

BOARD OF APPEALS
November 18, 2020 6:00 p.m.

AGENDA

DOCKET NO. AP2020-032: An appeal was made by Allen & Cheryl Swope for a variance from the minimum lot size of 3 acres to 1.7 acres to create an exemption lot currently improved with dwelling and accessory structures on property owned by the Appellant and located at 14683 Falling Waters Road, Williamsport, zoned Environmental Conservation. 6:00 pm - **GRANTED**

DOCKET NO. AP2020-033: An appeal was made by Mitchell & Abigail Leizer for a special exception to establish a food processing and packaging plant in basement of existing residential dwelling, variance from required 400 ft. setback from lots occupied by a dwellings to 68 ft. from left side yard, 100 ft. from right sign yard, and 79 ft. from rear property line on property owned by the Appellant and located at 11354 Big Pool Road, Big Pool, zoned Environmental Conservation. 6:30 pm - **GRANTED**

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. 7:00 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 November 9, 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**

ALLEN AND CHERYL SWOPE

Appellants

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Appeal No.: AP2020-032

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OPINION

Allen and Cheryl Swope (hereinafter “Appellants”) request a variance to reduce the minimum lot size from three (3) acres to 1.7 acres to create an exemption lot currently improved with a dwelling and accessory structures at the subject property. The subject property is located at 14683 Falling Waters Road, Williamsport, Maryland; is owned by Appellants; and is zoned Environmental Conservation. The Board held a public hearing on the matter on November 18, 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 14683 Falling Waters Road, Williamsport, Maryland. The property is zoned Environmental Conservation.
2. The subject property was previously zoned Conservation, but was amended to Environmental Conservation following the adoption of the EC zoning

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.

district in 2005.

3. The subject property is oddly configured with a larger area that stems off into a smaller area that fronts Falling Waters Road. It is this 1.7-acre stem portion which comprises the portion of the property which is the subject of this zoning request.

4. There is an existing dwelling, well and septic on the subject property. The dwelling has been there for more than 100 years. There is also an existing 25-foot right-of-way providing access to the dwelling, accessory buildings, and the remaining lands. The County has approved the access point for the right-of-way along Falling Waters Road.

5. The remaining lands of the subject property are wooded and remain in forestry management.

6. The dwelling currently has an occupant who acts as the caretaker for the subject property.

7. Appellants are not seeking to increase density but instead create a practical subdivision of the land.

8. There is an existing pole barn which Appellants use to store vehicles and equipment. The barn is in close proximity to the existing dwelling but is used separately by Appellants.

9. Most of the properties in the immediate vicinity along Falling Waters Road range in size from 1 acre to 1.78 acres.

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) 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, Appellants seek to create an exemption lot which is permitted by Section 5B.4(a) of the Zoning Ordinance. That section specifically provides that the “minimum lot size shall be the minimum lot size for the zoning of the property prior to the effective date of this amendment.” The minimum lot size in the Conservation zoning district at that time was three (3) acres. Thus, Appellants’ exemption is required to be 3 acres, subject to the request for variance relief herein.

Appellants’ property is oddly configured with a dwelling and related outbuilding located on a small portion that stems off toward Falling Waters Road. The dwelling and some of the buildings long pre-date the inception of the Zoning Ordinance. Appellants

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).

seek to subdivide this stem portion as an exemption lot, albeit smaller than typically required. Their intent is not to increase the density, but to create a sensible and practical subdivision. While they could add the necessary acreage to meet the 3-acre requirement, it would be arbitrary to do so. Moreover, doing so would likely include boxing in the existing pole barn which Appellants actively use for their own purposes. The 3-acre requirement imposes an unnecessary burden and significant practical difficulty for Appellants to effectuate a practical improvement to the subject property. The variance relief requested will relieve that burden and allow for a common and practical use of Appellants' property, consistent with the intent and spirit of the Ordinance.

Accordingly, the request for a variance to reduce the minimum lot size from three (3) acres to 1.7 acres to create an exemption lot currently improved with a dwelling and accessory structures 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: Michael Zampelli, Acting Chair

Date Issued: December 8, 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**

MITCHELL AND ABIGAIL LEIZER

Appellants

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Appeal No.: AP2020-033

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OPINION

Mitchell and Abigail Leizer (hereinafter “Appellants”) request a special exception to establish a food processing and packaging plant in an existing residential dwelling, and a variance to reduce the left side yard setback from 400 feet to 68 feet, a variance to reduce the right yard setback from 400 feet to 100 feet, and a variance to reduce the rear yard setback from 400 feet to 79 feet at the subject property. The subject property is located at 11354 Big Pool Road, Big Pool, Maryland; is owned by Appellants; and is zoned Environmental Conservation. The Board held a public hearing on the matter on November 18, 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 11354 Big Pool Road, Big

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.

Pool, Maryland. The property is zoned Environmental Conservation.

2. The subject property consists of a single-family dwelling on approximately 3.19 acres. The subject property is accessed by a long driveway proceeding along the western boundary and extending from Big Pool Road to the dwelling.

3. Appellant seeks to establish a butcher-type food processing operation for cutting meat, sealing packaging, sales of supplies and light food preparation such as curing and making jerky.

4. The proposed business would operate on Fridays from 4:00 p.m. to 8:00 p.m., and Saturdays from 9:00 a.m. to 7:00 p.m.

5. The business would use a separate entry door to the basement and operate in a 20-foot by 15-foot space. The business will have several items of equipment, a hood and will require upgrades to electrical service.

6. Appellants will utilize a small 2-foot by 2-foot sign near the end of the driveway, but most sales will be by pre-order. The meat will be ordered and picked up on Thursdays and processed for pick up on Fridays and Saturdays.

7. Appellants will be installing an upgraded water system to allow the well to handle the needs of the home and business.

8. The closest neighbor lives approximately 500 yards from Appellants' residence.

9. There was no opposition presented to 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 proposed operation is small in scale and tailored to operate out of Appellants’ business. The subject property is set back from the main road, is isolated and considerably distant from any neighboring homes. There will be no gas, odor or light emissions, and no dust, noise, or significant traffic to and from the property. Aside from the sign, there will be no outward indications that a business operates at the property. 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 a food processing and packaging plant in an existing residential dwelling at the subject property is hereby GRANTED, by a vote of 5–0.

Variances

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 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 Zoning Ordinance requires that setbacks for the proposed business be 400 feet from adjoining properties that contain a dwelling. This results in Appellants needing 400-foot setbacks on the left, right and rear of the dwelling. Appellants did not construct the dwelling and have not changed the boundary lines or setbacks during the time of their ownership. They cannot move the house or expand the setbacks under the circumstances. Moreover, the 400-foot setback is extreme given that Appellants’ closest neighbor is approximately 500 yards away. It presents a practical difficulty as it is

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).

unnecessarily burdensome to achieve. The surrounding circumstances mitigate against any concern that may arise from not adhering to the full setback requirements and warrant a relaxation of the setback requirements as requested.

Accordingly, the request for variances to reduce the left side yard setback from 400 feet to 68 feet, to reduce the right yard setback from 400 feet to 100 feet, and to reduce the rear yard setback from 400 feet to 79 feet 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: Michael Zampelli, Acting Chair

Date Issued: December 8, 2020

Notice of Appeal Rights

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

BERNARD R. KEFAUVER, JR. &

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Appeal No.: AP2020-023

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SONDRA K. RIGGS

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Appellants

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OPINION

Bernard R. Kefauver, Jr., and Sondra K. Riggs (hereinafter “Appellants”) request a special exception to establish a gunsmithing/gun repair shop as a resident business at the subject property. The subject property is located at 546 Prospect Hill Road, Knoxville, Maryland; is owned by Appellants; and is zoned Environmental Conservation. The Board held a public hearing on the matter on November 18, 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 546 Prospect Hill Road, Knoxville, Maryland. The property is zoned Environmental Conservation.
2. The subject property consists of a single-family dwelling and a two-story detached garage, which is 26’ by 35’ in dimension. The subject property is located in the Prospect Hill subdivision.

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.

3. Appellant seeks to operate a part-time gunsmithing and gun repair business from the detached garage building. Business would be conducted by appointment only and will involve picking up guns from other locations to bring to the subject property for repair. Customers will not be coming to the subject property.

4. Appellants would not be engaged in the sale of guns. Instead the business would provide stock repair, gun repair, stock alterations, machining, and maintenance for customers' guns.

5. Appellants plan to store guns in a large, secure gun safe on the premises. There will be no test firing at the subject property.

6. Appellants will receive deliveries via FedEx, UPS, or USPS, of parts or accessories as necessary for each repair project.

7. The neighborhood contains several other resident businesses, including a construction company, sign business and a home office. Appellants did not receive any negative reaction from their immediate neighbors.

8. The subject property is subject to Covenants and Restrictions which prohibit having a business on any lot.

9. The proposed business would not have any signage.

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. In the instant case, the proposed business is a part-time, hobby business. There will be no traffic to the property for the business and work will be done in the garage on the property. There will be no gas, odor or light

emissions, and no dust, noise, or significant traffic to and from the property. There will be no signage and thus no outward indications that a business operates at the property.

The Board received a letter in opposition to this request, citing a concern for expansion of the use, property value decline and a violation of the Covenants and Restrictions. Appellants' testimony and willingness to stipulate to limitations address any concerns for expansion. The effect on property value is not a valid concern for the Board. Property values are affected by a variety of facts and circumstances and it is impossible to quantify, let alone correlate to the proposed use in this case. With respect to the Covenants and Restrictions, the evidence suggests that they are antiquated and that other property owners have been permitted to stretch their boundaries over the years. Furthermore, the Board's charge is to consider the special exception request in terms of zoning for the subject property; the issue of Covenants and Restrictions is left to Appellants, separate and apart from this case.

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 a gunsmithing/gun repair shop as a resident business at the subject property is hereby GRANTED, by a vote of 5-0.

BOARD OF APPEALS

By: Michael Zampelli, Acting Chair

Date Issued: December 8, 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.