

BOARD OF APPEALS

December 16, 2020

AGENDA

DOCKET NO. AP2020-035: An appeal was made by RNE Venture Real Estate LLC for a variance for building mounted signs to face adjoining residential district on property owned by the appellant and located at 19638 Leitersburg Pike, Hagerstown, zoned Business Local. 6:00 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 December 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:**

Katie Rathvon, Zoning Coordinator
80 W Baltimore St
Hagerstown, MD 21740
krathvon@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**

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RNE VENTURE REAL ESTATE, LLC * **Appeal No.: AP2020-035**
Appellant *

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OPINION

RNE Venture Real Estate, LLC (hereinafter “Appellant”) requests a variance for building mounted signs to face an adjoining residential zoning district at the subject property. The subject property is located at 19638 Leitersburg Pike, Hagerstown, Maryland 21742; is owned by Appellant; and is zoned Business Local. The Board held a public hearing on the matter on December 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 19638 Leitersburg Pike, Hagerstown, Maryland 21742. The subject property is zoned Business Local, BL.
2. The subject property consists of a two-story professional office building

¹ Due to the COVID-19 pandemic, in-person access and contact for public hearings has been limited, especially in County buildings. In December 2020, the County transitioned to conducting quasi-judicial hearings exclusively by remote virtual hearing. All participants and witnesses, including the Board members and staff appeared via Zoom 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 Meridian Building.

3. The property immediately adjacent to the north of the subject property is the home of Hagerstown Church of Christ. Said property is located in a residential zoning district, but there are no residences on the property.

4. The Meridian Building currently has wall-mounted signs facing Leitersburg Pike along the front façade of the building. The subject property does not have a roadside directory and the existing signs serve to inform the public of the businesses therein.

5. Appellant proposes to erect two (2) wall-mounted signs on the side of the building facing oncoming traffic traveling south on Leitersburg Pike. The signs would consist of black lettering and would match the existing signage on the front façade of the building. The signs will not be illuminated.

6. The proposed signage is intended for new medical practices which are moving into the Meridian Building.

7. 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

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).

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 restricts the use of signage on the north façade of the Meridian Building because it adjoins property in a residential zoning district. While the clear intent was to protect residential property from unwanted commercial intrusion, that intent is only carried out if the property is actually used for residential purposes. In the instant case, the adjoining property is used exclusively as a church. It is unreasonable to strictly apply this restriction given the nature of the adjoining use and the fact that the church did not object to Appellant’s proposal.

Appellant is in the business of managing and renting professional office space in the Meridian Building. A reasonable expectation for tenants is that they will be able to display signage or otherwise announce the presence of their business at the location. In the absence of a roadside directory or other roadside sign, Appellant was left to utilize wall-mounted signs along the façade of the building. Several signs already exist facing the roadway along the front of the building. Moreover, the new medical practices will be occupying the portion of the building where the signs are to be mounted, thus making it unnecessarily burdensome and practically illogical to locate the signs on the front façade of the building.

Accordingly, the request for a variance for building mounted signs to face adjoining residential zoning district at the subject property is 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: December 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.