

**BOARD OF APPEALS**

**February 17, 2021**

**AGENDA**

**DOCKET NO. AP2021-001:** An appeal made by Cynthia Hallberlin and Joel Kanter for a special exception for a guest house in an accessory building on parcel improved with a dwelling and a variance from the maximum 25% of total area for roof structures to 100% of total roof area for deck on guest house on property owned by the Appellants and located at 19032 Sandyhook Road, Knoxville, Zoned Rural Village. 6:00 pm - **GRANTED**

**DOCKET NO. AP2021-002:** An appeal made by Benjamin Basford for a variance to reduce existing undersized lot of 10,890 sq. ft. to 10,071 sq. ft. and variance to reduce rear yard setback from minimum 25ft. to 10 ft. for the reconfiguration of lot to allow for better access to the adjoining lot and for each lot to have their own access on properties owned by the Appellant and located at 18906 & 18906A Sandyhook Road, Knoxville, Zoned Rural Village. 6:45 pm - **GRANTED**

**DOCKET NO. AP2021-003:** An appeal made by Myers Limited Partnership for a variance for the placement of a second freestanding sign on property improved with a freestanding sign owned by the Appellant and located at 16527 National Pike, Hagerstown, Zoned Business General. 7:30 pm - **GRANTED**

**DOCKET NO. AP2021-004:** An appeal made by Cedar Valley Plaza LLC from the Planning Commission's denial of the creation of a four-lot subdivision without the required 25 ft. public road frontage and variance from minimum parking space requirements for each parcel, Address 1729 Massey Boulevard parcel from required 60 spaces to 59, Address 1719 Massey Boulevard parcel from required 44 spaces to 41 spaces, Address 1703 Massey Boulevard parcel from required 72 spaces to 66 spaces, Addresses 1701, 1705, 1709, and 1713 Massey Boulevard from required 889 spaced to 667 spaces on properties owned by the Appellant and located at 1701, 1703, 1705, 1709, 1713, 1719, & 1729 Massey Boulevard, Hagerstown, Zoned Business General. 8:15 pm – **GRANTED WITH CONDITION**

\*\*\*\*\*

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 February 8, 2021. 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. No participants will be allowed to attend the hearing in person 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

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

CYNTHIA HALLBERLIN AND  
JOEL KANTER

**Appellants**

**Appeal No.: AP2021-001**

\*  
\*  
\*  
\*

\* \* \* \* \*

**OPINION**

Cynthia Hallberlin and Joel Kanter (hereinafter “Appellants”) request a special exception for a guest house in an accessory building, and a variance to increase the maximum total area for a roof structure from 25% to 100% at the subject property. The subject property is located 19032 Sandy Hook Road, Knoxville, Maryland, and is zoned Rural Village. The Board held a public hearing on the matter on February 17, 2021.<sup>1</sup>

This appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County and upon proper notice to the parties and general public as required.

**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 19032 Sandy Hook Road, Knoxville, Maryland. The subject property is zoned Rural Village.

---

<sup>1</sup> 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.

2. The subject property consists of a single-family home and an accessory building, built into the hill. The accessory building is old and in need of significant repair.

3. Appellants purchased the property in 2006 and have used the accessory building as a storage shed since that time.

4. Appellants have four (4) adult children and several grandchildren who visit them often during the year. Appellants would like to provide a place for extended family to stay during their visits.

5. Appellants propose to convert the accessory building to a guest house and art studio with a rooftop deck. It would be a 20-foot by 14-foot, two story building with the rooftop deck to encompass the entire area of the roof.

6. Appellants' home has been renovated since they purchased in 2006 and its configuration makes it difficult to expand or construct an addition.

7. Appellants expect to have guests approximately 30-35 days per year and no one would be staying year-round.

8. 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 Board is called upon to consider Appellants' proposal to convert a decaying accessory building into a guest house and art studio. Appellants are

proposing to keep the same basic footprint of the building but to remodel so that their family members have a place to stay when visiting. The building itself is built into the hill and existed at the time Appellants purchased the property. It is unlikely that any of the surrounding properties would notice the building being use, much less be impacted by its use for the four (4) to six (6) weeks each year that it will be used. 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, secures public safety and welfare and upholds the spirit of the Ordinance.

### *Variances*

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. “‘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,

---

<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).

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).)

Appellants have requested a variance to allow for the construction of a rooftop deck that encompasses all of the rooftop area. If they were to comply with the Ordinance requirements, it would result in prohibitively small deck area, given the size of the accessory building. Thus, strict compliance would prevent a use enjoyed by other similarly situated properties and results in practical difficulty for which relief should be afforded.

Accordingly, Appellants' request for a special exception for a guest house in an accessory building at the subject property is GRANTED, by a vote of 3-2. Appellants' request for a variance to increase the maximum total area for a roof structure from 25% to 100% at the subject property is GRANTED, by a vote of 5-0. The special exception and variance are 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: March 12, 2021**

#### 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**

**BENJAMIN MARTIN BASFORD**

**Appellants**

**Appeal No.: AP2021-002**

\* \* \* \* \*

**OPINION**

Benjamin Martin Basford (hereinafter “Appellant”) requests a variance to reduce the existing undersized lot from 10,890 square feet to 10,071 square feet and to reduce the rear yard setback from 25 feet to 10 feet to reconfigure lot lines at the subject property. The subject property is located at 18906 and 18906A Sandy Hook Road, Knoxville, Maryland and is zoned Rural Village. The Board held a public hearing on the matter on February 17, 2021.<sup>1</sup>

This appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County and upon proper notice to the parties and general public as required.

**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 18906 Sandy Hook Road A, Knoxville, Maryland. The subject property is zoned Rural Village.

---

<sup>1</sup> 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.

2. The subject property consists of two (2) lots, identified at 18906 and 18906A, each with a single-family dwelling on them. The lots are long and narrow with a north-south dividing line that extends from Sandy Hook Road to Clark Road.

3. The current lot configuration results in the lots having to encroach upon the other for access.

4. The dwelling at 18906 was constructed in 1910. The properties were configured before the adoption of the Zoning Ordinance.

5. Appellant proposes to reconfigure the boundary line to divide the lots from east to west and create two (2) equally sized lots. The lot on 18906A would vacate use of the shared driveway from Sandy Hook Road and create a new driveway extending from Clark Road.

6. Both lots have public water and sewer service and can stand alone upon subdivision.

7. The properties in the surrounding area are all undersized according to the Zoning Ordinance requirements.

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.<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

---

<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).

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, there are two variances for the Board to consider. First, Appellant requests a variance from the required lot size for both lots in order to re-subdivide them into a more orderly configuration. Appellant’s lots do not meet the requirements of the Ordinance as they currently exist, thus it would be impossible for him to comply while maintain two (2), subdivided lots. To improve their utility and marketability, Appellant is seeking to reconfigure the lots and eliminate the constant encroachment that the current configuration causes. Appellant’s request is for a slight reduction in total lot area to redraw the line of subdivision and balance the properties. Based on the evidence and testimony, the only way to maintain strict compliance would be for Appellant to eliminate one of the lots. This is an unacceptable and unjust result and imposes a hardship on Appellant in the reasonable enjoyment of his property.

Appellant also requests a variance to reduce the rear yard setback for 18906A Sandy Hook Road, to allow for ten (10) feet rather than the required twenty-five (25) feet. The analysis here is similar to that for the request to reduce the required lot size. The only property affected by this variance request is 18906 Sandy Hook Road, which is also



owned by Appellant. The location of the dwellings, the narrowness and size of the lots all create a hardship and make it difficult to comply with the setback requirements. Appellant's requested variance is reasonable and the minimum necessary to serve the larger objective of changing the lot configuration. The Board finds that Appellant has satisfied the criteria for a variance, and that the requests are consistent with the spirit and intent of the Ordinance and should be granted.

Accordingly, the request for variances to reduce the existing undersized lot from 10,890 square feet to 10,071 square feet and to reduce the rear yard setback from 25 feet to 10 feet to reconfigure lot lines at the subject property are 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: March 12, 2021**

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**

**MYERS LIMITED PARTNERSHIP**

**Appellants**

**Appeal No.: AP2021-003**

\* \* \* \* \*

**OPINION**

Myers Limited Partnership (hereinafter “Appellant”) requests a variance for placement of a second freestanding sign on property improved with a freestanding sign at the subject property. The subject property is located at 16527 National Pike, Hagerstown, Maryland and is zoned Business General. The Board held a public hearing on the matter on February 17, 2021.<sup>1</sup>

This appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County and upon proper notice to the parties and general public as required.

**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 16527 National Pike, Hagerstown, Maryland. The subject property is zoned Business General.
2. The subject property consists of the Dollar General Store and the building

---

<sup>1</sup> 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.

which formerly housed the Traditions at the White Swan business.

3. The subject property has public water service but utilizes a septic system that is shared by the business uses thereon. Public sewer has been extended to nearby properties but not to the subject property as of yet.

4. Appellant is in the process of leasing the subject property to a SERVPRO business.

5. There is an existing Dollar General sign located on the west side of the subject property.

6. Appellant is seeking to establish a second sign on the east side of the subject property for the SERVPRO business. The sign will be located outside the designated State Highway Administration area and will be illuminated.

7. The subject property cannot be subdivided because of the shared septic system.

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.<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

---

<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).

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, the two (2) business uses share a common septic system, which prevents proper subdivision of the property and would alleviate the need for this appeal. The subject property suffers from not yet being extended public sewer service, a hardship that Appellant cannot overcome on its own. Appellant is seeking to establish full use of the subject property by having both business uses active. A necessary and reasonable part of establishing a business, particularly along a busy roadway, is signage. It is unlikely that any business would want to locate to the subject property if it were not permitted to have signage. As a result, denying the second sign would unreasonably prevent use of the subject property for a permitted use and impose an arbitrary burden upon a business looking to use the subject property. The Board finds that Appellant has satisfied the criteria for a variance based on practical difficulty and the request should be granted.

Accordingly, the request for a variance for placement of a second freestanding sign on property improved with a freestanding sign 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: March 12, 2021**

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**

**CEDAR VALLEY PLAZA, LLC**

**Appellant**

**Appeal No.: AP2021-004**

\* \* \* \* \*

**OPINION**

Cedar Valley Plaza, LLC (hereinafter “Appellant”) brings this appeal from a denial by the Planning Commission<sup>1</sup> of its request to create a four-lot subdivision without the required 25-foot public road frontage and a request for a variances from the minimum required parking spaces from 60 spaces to 59 spaces for 1729 Massey Boulevard, 44 spaces to 41 spaces for 1719 Massey Boulevard, 72 spaces to 66 spaces for 1703 Massey Boulevard and 889 spaces to 667 spaces for 1701, 1705 1709 and 1713 Massey Boulevard, all located at the subject property. The subject property is the Cedar Valley Plaza shopping center, comprised of 1701, 1703, 1705, 1709, 1713, 1719, and 1729 Massey Boulevard, Hagerstown, Maryland; is owned by Appellant; and is zoned Business General. The Board held a public hearing on the matter on February 17, 2021.<sup>2</sup>

This appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County and upon proper notice to the parties and general public as required.

---

<sup>1</sup> Whenever referenced herein, it shall include the Director and Zoning Administrator, Ashley Holloway, acting as the Planning Commission’s designee.

<sup>2</sup> 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.

### **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 known as the Cedar Valley Plaza shopping center and located at 1701, 1703, 1705, 1709, 1713, 1719, and 1729 Massey Boulevard, Hagerstown, Maryland. The subject property is zoned Business General.

2. The subject property has a large retail row containing a Tractor Supply store, Ready, Set, Play location, the former Ollies Bargain Outlet store and a former Kmart retail space. The subject property also contains separate pads with a McDonalds, Roy Rogers, and Mexicali Cantina restaurants.

3. Currently, all of the retail spaces and restaurant uses are part of the same parcel and lot.

4. Roy Rogers does not have direct access to Massey Boulevard, but uses and access point next to McDonalds and access at the intersection with Railway Lane.

5. Mexicali Cantina does not have direct access to Massey Boulevard but uses the intersection with Railway Lane and access from the intersection with Heister Street.

6. The existing parking spaces does not meet the current requirements of the Zoning Ordinance.

7. Appellant is seeking to subdivide the subject property into 4 parcels, with each of the restaurants becoming a separate parcel, and the remaining retail spaces comprising the fourth parcel.

8. On January 11, 2021, the Planning Commission denied Appellant's request for subdivision approval because it did not meet the public road frontage requirement.

9. There was no opposition presented to this appeal.

## **Rationale**

### *The Subdivision Ordinance*

The Washington County Subdivision Ordinance provides for the configuration and orientation of lots, as well as sets forth the requirements for road frontage and access in Section 405.11. Specifically, Section 405.11 B.1 provides:

- B. Every lot shall have a minimum of twenty-five (25) feet, and shall have access to a road or street that has been dedicated to public use and accepted for public maintenance.....

Section 405.11 B.1 goes on to enumerate seven (7) conditions that must be present for such a subdivision to be approved. Appellant seeks a modification of the Subdivision Ordinance requirements so that the subdivision can be approved without the required road frontage. The Planning Commission through delegation to the Director, denied subdivision approval based on the failure to meet said requirements.

In the instant case, creating public road frontage and thus, direct access to the restaurant parcels is both impractical and impossible. There are already multiple access points along Massey Boulevard serving both the Cedar Valley Plaza shopping center and other restaurant and retail uses which exist on both sides of the roadway. It would not be safe or feasible to create additional access just to comply with the subdivision requirements. In fact, strict adherence to those requirements would likely result in significant safety hazards for vehicle traffic.

Clearly, the conditions imposed by the Subdivision Ordinance are to make sure that lots are not created without access. In this case, Appellants can alleviate that concern by utilizing existing means of access already available to the businesses operating at the subject property. Nothing would change about the current operation, except that new lot lines would be drawn to improve marketability. The subject property would otherwise continue to operate as is currently does. The Board finds this solution to be a



reasonable and appropriate compromise, given that creating a separate access point for the subject property would be cost-prohibitive and an engineering nightmare. Appellant's proposed modifications should be accepted, and the subdivision approval process should move forward.

### *Variances*

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56.<sup>3</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. "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, we start with the premise that the number of parking spaces already does not meet the Zoning Ordinance requirements. With that said, the record

---

<sup>3</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).

demonstrates that the parking lot at the subject property is significantly underutilized and has never been full, even when all of the retail uses were operating. The requests are the minimum necessary to achieve Appellant's goal of subdividing the four parcels and improving the marketability of the subject property. In this case, strict compliance cannot be achieved even under current circumstances; therefore, it would be unreasonable and result in hardship to impose such strict requirements on the reasonable subdivision of the property. The Board finds that the parking variances are consistent with the spirit and intent of the Zoning Ordinance and should be granted.

Accordingly, Appellants' appeal is SUSTAINED, and the request to modify the subdivision requirements to create a one (1) lot subdivision at the subject property is GRANTED, by a vote of 5-0. In addition, Appellant's requests for variances to reduce the minimum required parking spaces from 60 spaces to 59 spaces for 1729 Massey Boulevard, 44 spaces to 41 spaces for 1719 Massey Boulevard, 72 spaces to 66 spaces for 1703 Massey Boulevard and 889 spaces to 667 spaces for 1701, 1705 1709 and 1713 Massey Boulevard, all at the subject property is GRANTED, by a vote of 5-0. The request 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: March 16, 2021**

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.

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