

BOARD OF APPEALS

March 31, 2021

AGENDA

DOCKET NO. AP2021-006: An appeal was made by Johnson Development Associates Inc for a variance from the minimum off-street parking requirement for future construction of two buildings for warehousing. Building A: variance from required 879 parking spaces to 491 spaces. Building B: variance from required 439 spaces to 246 spaces. The property is owned by Review Herald Publishing Co. and located at 55 West Oak Ridge Drive, Hagerstown, Zoning Highway Interchange. 6:00 pm-**GRANTED**

DOCKET NO. AP2021-007: An appeal was made by Bowman 2000 LLC for a variance from the minimum off-street parking requirement from 426 spaces to 275 spaces for future construction of a warehouse on property owned by the Appellant and located at 12000 Greencastle Pike, Hagerstown, Zoned Highway Interchange. 6:45 pm-**GRANTED**

DOCKET NO. AP2021-008: An appeal was made by Owen & Traci Garland for a special exception to establish a second dwelling unit on parcel currently improved with a dwelling on property owned by the Appellants and located at 21441 Boonsboro Mountain Road, Boonsboro, Zoned Environment Conservation. 7:30 pm-**GRANTED with Conditions.**

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 Katie Rathvon at 240-313-2464 Voice, 240-313-2130 Voice/TDD no later than March 22, 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 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**

**JOHNSON DEVELOPMENT
ASSOCIATES, INC.**

Appellant

Appeal No.: AP2021-006

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OPINION

Johnson Development Associates, Inc. (hereinafter “Appellant”) requests a variance from the off-street parking variance from 879 spaces to 491 spaces for Building A, and from 439 spaces to 246 spaces for Building B, in order to construct two (2) warehouse buildings at the subject property. The subject property is located at 55 W. Oak Ridge Drive, Hagerstown, Maryland and is zoned Highway Interchange. The Board held a public hearing on the matter on March 31, 2021.¹

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. The subject property is located at 55 W. Oak Ridge Drive, Hagerstown,

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.

Maryland and is owned by the Review Herald Publishing Co. The subject property is zoned Highway Interchange.

2. Appellant is the contract purchaser for the subject property and proposes to redevelop the property a warehouse location.

3. The subject property currently consists of approximately 81 acres, with the former Review Herald Publishing building. It is bounded on the north by Interstate 70, the south by Oak Ridge Drive, the east by the Norfolk Southern rail lines and on the west by the Premium Outlets shopping center.

4. Appellant's plan is to construct two (2) warehouses at the subject property. In concept, Building A would be approximately 1,200,000 square feet and Building B would be approximately 600,000 square feet.

5. Appellant will be handling the development of the subject property but has not identified an end-user at this time.

6. The City of Hagerstown is in the process of revising off-street parking requirements for warehouse facilities to require one (1) space for every 2,000 square feet as opposed to 1,500 square feet.

7. Appellant's current concept plan, with the requested reduction in spaces would result in approximately 65% of the property being impervious surfaces.

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

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).

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).)

Appellants seek to construct two (2) warehouse buildings on the former Review Herald property. Despite the size of the property, issues arise as it relates to the parking spaces required for the proposed operations. Appellants are forced to contend with the outdated parking mandates of the Zoning Ordinance. While they were clearly well-intentioned at the time of adoption, the parking requirements do not reflect the modernization of warehouses and distribution facilities. Increased automation and a reduction in personnel has led to a reduced need for on-site parking to accommodate employees and visitors. As a result, it is the application of the Ordinance requirements that render the property unique. The imposition of these requirements prohibits reasonable and meaningful development of the subject property, which is a characteristic unique to this property and proposed use. Thus, the uniqueness of the property can be found in the unusual effects on its development as a result of the restrictive parking requirements.

It is vital to the operation that trucks be able to navigate loading areas and trailer drop areas which will occupy significant exterior space. This is especially true given that Appellant intends to construct two (2) separate warehouse buildings which may need to operate independent of each other if there are different end-users. To comply with the Ordinance requirements, Appellant would either need to reduce those vital areas or increase considerably, the paved surface area surrounding the facility. The former creates the likelihood for reduce efficiency and productivity from the intended use and the latter is environmentally irresponsible. Strict compliance would achieve little practical benefit, as it is overwhelmingly likely that most of the parking area will not be utilized. The application of the Ordinance parking requirements is unreasonably burdensome, creates a hardship and results in practical difficulty, namely the unnecessary choice of reducing warehouse space or encroaching upon green space to achieve compliance. The variance request herein is the minimum necessary to ensure orderly development of the property and consistent with the spirit and intent of the Ordinance.

Accordingly, the request for a variance from the off-street parking variance from 879 spaces to 491 spaces for Building A, and from 439 spaces to 246 spaces for Building B, in order to construct two (2) warehouse buildings 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: April 28, 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**

BOWMAN 2000, LLC

Appellant

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Appeal No.: AP2021-007

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OPINION

Bowman 2000, LLC (hereinafter “Appellant”) requests a variance from the off-street parking requirements from 426 spaces to 275 spaces for construction of a warehouse at the subject property. The subject property is located at 12000 Greencastle Pike, Hagerstown, Maryland and is zoned Highway Interchange. The Board held a public hearing on the matter on March 31, 2021.¹

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 12000 Greencastle Pike, Hagerstown, Maryland. The subject property is zoned Highway Interchange.
2. The subject property consists of 55 acres, of which 38 acres is proposed to

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.

be developed. A large portion of the subject property is unusable due to being in a flood plain and having wetlands areas and steep, sloping topography.

3. Appellant proposes to construct an approximately 480,000 square foot warehouse and distribution facility at the subject property. Appellant proposes to install 275 parking spaces and 199 trailer spaces.

4. Appellant expects the end user to have between 175 and 200 employees on any given shift. There will be minimal, if any, customer traffic to the property.

5. The City of Hagerstown is in the process of revising off-street parking requirements for warehouse facilities to require one (1) space for every 2,000 square feet as opposed to 1,500 square feet.

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 25.56.² “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).

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).

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 this case, Appellants are again faced with the outdated parking mandates of the Zoning Ordinance. While they were clearly well-intentioned at the time of adoption, the parking requirements do not reflect the modernization of warehouses and distribution facilities. Increased automation and a reduction in personnel has led to a reduced need for on-site parking to accommodate employees and visitors. As a result, it is the application of the Ordinance requirements that render the property unique. The imposition of these requirements prohibits reasonable and meaningful development of the subject property, which is a characteristic unique to this property and proposed use.

It is vital to the operation that trucks be able to navigate loading areas and trailer drop areas which will occupy significant exterior space. In order to comply with the Ordinance requirements, Appellant would either need to reduce those vital areas or increase considerably, the paved surface area surrounding the facility. The former creates the likelihood for reduce efficiency and productivity from the intended use and the latter is environmentally irresponsible. In sum, strict compliance would increase adverse effects emanating from the operation or prevent a permitted use to occur on a portion of the property. Likewise, strict compliance would achieve little practical benefit, as it is overwhelmingly likely that most of the parking area will not be utilized. The application of the Ordinance parking requirements is unreasonably burdensome, creates a hardship and results in practical difficulty, namely the unnecessary choice of reducing warehouse

space or encroaching upon green space to achieve compliance. The variance request herein is the minimum necessary to ensure orderly development of the property and consistent with the spirit and intent of the Ordinance.

Accordingly, the request for a variance from the off-street parking requirements from 426 spaces to 275 spaces for construction of a warehouse 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: April 28, 2021

Notice of Appeal Rights

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

OWEN AND TRACY GARLAND
Appellants

Appeal No.: AP2021-008

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OPINION

Owen and Tracy Garland (hereinafter “Appellants”) request a special exception to establish a second dwelling unit on a parcel currently improved with a dwelling, at the subject property. The subject property is located at 21441 Boonsboro Mountain Road, Boonsboro, Maryland and is zoned Environmental Conservation. The Board held a public hearing on the matter on March 31, 2021.¹

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 are the owners of the subject property, which is located at 21441 Boonsboro Mountain Road, Boonsboro, Maryland. The subject property is zoned Environmental Conservation.

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.

2. The subject property is located within the Low-Density Residential Use Policy Area as designated in the Comprehensive Plan.

3. The subject property has an approved perc test for a separate well and septic system.

4. Appellants propose to construct a 48 by 40-foot structure consisting of a garage with a living space on the upper level. The building would have a separate well and septic system as well as separate electric service.

5. Appellants are attempting to create space for their aging parents whose care needs have increase.

6. The proposed construction would share access via the existing driveway that already serves Appellants' residence.

7. Appellants have no intent to subdivide the subject property and want it to remain in the family.

8. The area designated for construction is naturally flat and provides adequate area to establish separate well and septic systems.

9. Appellants have inquired of the neighbors regarding this project, and none have expressed an issue or objection.

10. There was no opposition presented to this appeal.

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 Board is called upon to consider Appellants' proposal to construct a second dwelling unit on their residential property. Part of the structure will serve as a garage, for which Appellants would not be required to seek special exception approval. Appellants have designed the upper level as a residence to serve as a place for their aging parents whose care needs will undoubtedly increase. It is unlikely that any of the surrounding properties would notice the building being used as a residence, particularly given its outward appearance as a garage. Moreover, the request reflects a growing trend in societal dynamics, wherein families are caring for older generations at home rather than in nursing homes. The proposed use will not produce any noise, odor, gas, dust, or light that would adversely impact neighboring properties. 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. The Board finds that a condition is necessary to prevent use of the second dwelling as a rental unit, with the exception of family members staying there.

Accordingly, the request for a special exception to establish a second dwelling unit on a parcel currently improved with a dwelling, at the subject property. The application is granted upon the condition that the proposed use be consistent with the testimony and evidence presented herein and that the second dwelling unit is not to be used as a rental, except to allow for family members.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: April 28, 2021

Notice of Appeal Rights

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