

## BOARD OF APPEALS

May 12, 2021

### AGENDA

**DOCKET NO. AP2021-012:** An appeal was made by Timothy & Lisa Shank for a variance from the required 50 ft. minimum rear yard setback to 20 ft. for future construction of a dwelling on property owned by the Appellants and located at 19718 Longmeadow Road, Hagerstown, Zoned Residential Suburban. 6:00 pm **-GRANTED**

**DOCKET NO. AP2021-013:** An appeal was made by 2014 Lappans Road LLC for a variance from the required 25 ft. minimum setback from the street right-of-way to 15 ft. for freestanding sign on property owned by the Appellant and located at 18206 Lappens Road, Boonsboro, Zoned Rural Village. 6:45 pm **-GRANTED**

**DOCKET NO. AP2021-014:** An appeal was made by Hai Ung for a variance from the 300 sq. ft. maximum total sign area to 688 sq. ft. total sign area for installation of additional signage on existing freestanding sign pylon on property owned by the Appellant and located at 108 Railway Lane, Hagerstown, Zoned Business General. 7:30 pm **-GRANTED WITH CONDITIONS**

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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 May 3, 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](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**

**TIMOTHY AND LISA SHANK**

**APPELLANTS**

**APPEAL No. AP2021-012**

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**OPINION**

Timothy and Lisa Shank (hereinafter, “Appellants”) request a variance from the minimum 50 foot rear yard setback (Ordinance §8.5(b)) to 20 feet for future construction of a single-family dwelling on the subject property. The subject property is located at 19718 Longmeadow Road, Hagerstown, Maryland, and is zoned Residential Suburban. The Board held a public hearing on the matter on May 12, 2021.<sup>1</sup>

The appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County, Maryland (hereinafter, “Ordinance”) 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 at 19718 Longmeadow Road, Hagerstown, Maryland. The subject property is zoned Residential Suburban.
2. The subject property consists of approximately 0.3066 acres, improved by an existing vacant dwelling built in 1956, which is undersized for Appellants’ desired use, and has fallen into significant disrepair. The subject property is served by public water and private septic.

<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 County staff appeared via Zoom® videoconferencing, 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. Appellants also own a parcel of approximately 0.3034 acres to the immediate West of and adjacent to the subject property. Appellants submitted an exhibit showing the existing boundary line between these adjacent parcel as a “Line to be Vacated.” The aggregate area of the combined parcels will be approximately 0.61 acres.

4. The subject property is bordered on the South by Longmeadow Road and on the East by a 30 foot private right-of-way (the roadbed of which is owned by Appellants) which serves six other residential properties. Appellant testified that either the existing driveway or the right-of-way may be used to serve the new dwelling.

5. The property most affected by the requested variance is adjacent to and borders the subject property on the North. This most affected property is also owned by Appellants and currently is their principal residence.

6. Current regulations require a property with a single-family dwelling in the RS district to reserve a minimum of 10,000 square feet for septic purposes. Appellants and their engineer testified they are not aware of any plans to bring public sewer to the area that would serve the subject property.

7. Appellants are proposing to demolish the existing dwelling, combine the subject property with the adjacent parcel to the West, and construct a new, larger single-family dwelling on the combined parcel.

8. One person (the resident to the immediate West of the combined lot) testified in support of the variance.

#### **RATIONALE**

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship (Ordinance §§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 variances would do substantial injustice to the applicant and a lesser relaxation than that applied for would not give substantial relief; and 3) granting the

<sup>2</sup> “When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive (“or”), Maryland court 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).

variance would observe the spirit of the Ordinance and secure public safety and welfare (Ordinance §25.56(A)).

“Undue hardship” may be found when: (1) strict compliance with the Ordinance would prevent the applicant from securing a reasonable return from or to make reasonable use of the property; and (2) the difficulties or hardships are peculiar to the property and contrast with those of other property owners in the same district; and (3) The hardship is not the result of the applicant’s own actions (Ordinance §25.56(B)).

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’ representative testified that this case presented an undue hardship on Appellants to be able to construct the proposed dwelling within the 50 foot rear yard setback, given the unique issues associated with the subject property, even when combined with the adjacent lot.

Appellants have requested this variance to allow for the future construction of an approximately 30’ x 65’ single-family dwelling. The location of area that will be disturbed by demolition of the existing dwelling significantly limits the remaining lot area available for the required 10,000 square foot septic area that will serve the future dwelling. An exhibit submitted by Appellants shows the proposed septic area will take up almost all of the front yard of the combined lot and almost all of the area behind the to-be demolished existing dwelling, leaving a narrow envelope (depth-wise) in the rear of the combined lot within which the proposed future dwelling may be built.

Situating the proposed future dwelling between the side boundaries of the lot, and the front of the dwelling on the 50 foot rear yard setback provides the most reasonable and aesthetic placement, while maintaining roughly equal side yards on either side of the dwelling, avoiding any expected disturbed earth, and avoiding any encroachment on the required septic area.

The Board finds that for the variance requested in this case, requiring strict compliance would prevent Applicants from making a reasonable use of the subject property, the difficulties or hardships identified and testified to by Appellants are peculiar to the subject property and contrast with those of other property owners in the same district, and the hardship is not the result of Appellant’s own actions.

Therefore, Appellants' request for a variance from the minimum 50 foot rear yard setback to 20 feet for future construction of a single-family dwelling on the combined subject property and adjacent lot is GRANTED, by a vote of 5-0. Said variance is granted upon the condition that the proposed construction and placement of the dwelling be consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Paul Fulk, Chair

**Date Issued: June 11, 2021**

Notice of Appeal Rights

Any person or persons, jointly or severally, aggrieved by any decision of the Board of Appeals, or any taxpayer, or any officer, department, board, or bureau of the jurisdiction, may appeal the same to the Circuit Court for Washington County within thirty (30) days, in a manner set forth in Md. Code Ann., Land Use, § 4-401.

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

**2014 LAPPANS ROAD LLC**

**APPELLANT**

**APPEAL No. AP2021-013**

\* \* \* \* \*

**OPINION**

2014 Lappans Road LLC (hereinafter, “Appellant”) request a variance from the required minimum 25 foot setback from a dedicated street right-of-way (Ordinance §22.23(e)) to 15 feet for an existing freestanding commercial sign on the subject property. The subject property is located at 18206 Lappans Road, Boonsboro, Maryland, and is zoned Rural Village. The Board held a public hearing on the matter on May 12, 2021.<sup>1</sup>

The appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County, Maryland (hereinafter, “Ordinance”) 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 18206 Lappans Road, Boonsboro, Maryland. The subject property is zoned Rural Village (RV).
2. Appellant leased the subject property to a tenant who constructed (or caused to be constructed) a Dollar General® store on the property.
3. In October 2020, as part of the permitting process, Appellant, as

<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 County staff appeared via Zoom® videoconferencing, 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.

property owner, applied for and received an administrative adjustment (ADJ2020-002) for a 50.6 square foot illuminated double-sided freestanding commercial sign to reduce the required setback from 25 feet to 16 feet from the dedicated street right-of-way.<sup>2</sup>

4. Subsequent to construction of the store and sign, a final location survey revealed that the supporting structure of the sign was placed 15 feet from the dedicated street right-of-way, instead of the approved 16 feet, thus precipitating the instant appeal. In all other respects, the sign is in compliance with the Ordinance.

5. Appellant is proposing to leave the existing sign in place, so as to avoid the significant expense of relocating the sign a distance of 1 foot.

#### **RATIONALE**

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship (Ordinance §§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 variances 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 (Ordinance §25.56(A)).

“Undue hardship” may be found when: (1) strict compliance with the Ordinance would prevent the applicant from securing a reasonable return from or to make reasonable use of the property; and (2) the difficulties or hardships are peculiar to the property and contrast with those of other property owners in the same district; and (3) the hardship is not the result of the applicant’s own actions (Ordinance §25.56(B)).

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,

<sup>2</sup> Administrative adjustments are allowed when the requested adjustment does not exceed twenty percent (20%) of the required amount (Ordinance §25.8(a)). In this case, the adjustment previously granted exceeded the 20% limit due to equitable considerations after the site plan was reviewed and approved.

<sup>3</sup> “When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive (“or”), Maryland court 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).

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, Appellant’s representative testified that this case presented an undue hardship on Appellant if required to relocate the supporting structure of the sign (a sizable concrete base with electrical illumination components) a distance of 1 foot. Appellant’s representative suggested that this could be viewed as a request for a *de minimis* variance.

Appellant’s representative also noted that the setback line in this case is not measured from the boundary line, but rather from the dedicated street right-of-way, resulting in the sign being even further away from the boundary line, and even less of a concern for current traffic patterns.

Appellant has requested this variance to allow for the existing sign to remain in place.

The Board finds that for the variance requested in this case, this is an essentially a *de minimis* variance, with the benefits of strict compliance being significantly outweighed by the burdens this would place on Appellant to require the sign to be relocated a distance of 1 foot. The undue hardship would prevent Appellant from making a reasonable use of the subject property, the difficulties or hardships identified and testified to by Appellant are peculiar to the subject property and contrast with those of other property owners in the same district, and the hardship is not the result of Appellant’s own actions.

Therefore, Appellant’s request for a variance from the minimum 25 foot street right-of-way setback to 15 feet for the current placement of an existing freestanding commercial sign on the subject property is GRANTED, by a vote of 5-0. Said variance is granted upon the condition that the current placement of said existing sign remain consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Paul Fulk, Chair

**Date Issued: June 11, 2021**



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

**HAI UNG**

**APPELLANT**

**APPEAL No. AP2021-014**

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**OPINION**

Hai Ung (hereinafter, “Appellant”) requests a variance from the required 300 square foot maximum total sign area (Ordinance §22.23(e)) to 688 square feet for an existing freestanding commercial sign on the subject property. The subject property is located at 108 Railway Lane, Hagerstown, Maryland, and is zoned Business General. The Board held a public hearing on the matter on May 12, 2021.<sup>1</sup>

The appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County, Maryland (hereinafter, “Ordinance”) 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 is a representative of the property owner, UNG Enterprises LLC, which owns the subject property located at 108 Railway Lane, Hagerstown, Maryland. The subject property is zoned Business General (BG).
2. The subject property, which occupies a lot at the corner of Railway Lane and Wesel Biulevard, has a “strip” shopping center located on it, along with an existing freestanding commercial pole sign on the Railway Lane side of the property.

<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 County staff appeared via Zoom® videoconferencing, 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. The existing sign currently has an aggregate total sign area of 472 square feet.<sup>2, 3, 4</sup>

4. The current sign pole appears to have space for one additional double-sided sign of approximately 216 square feet.

5. The Ordinance allows for placement of a second freestanding sign on a corner lot, provided that the total square footage of both freestanding signs does not exceed 600 square feet (Ordinance §22.23(e)).

6. Appellant is proposing to add an additional 6' high x 18' wide (216 square foot) double-sided illuminated sign below the two existing double-sided illuminated signs, to advertise a new "urgent care" medical clinic at the shopping center.

7. Any store-front signage will not be visible by traffic heading Southwest on Wesel Boulevard, and this would present a significant problem for persons traveling in that direction who might be seeking urgent care.

#### **RATIONALE**

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship (Ordinance §§25.2(c) and 25.56).<sup>5</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 variances 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 (Ordinance §25.56(A)).

<sup>2</sup> In February 1991, an appeal (AP91-013) was granted without conditions for variances allowing the sign height to be 45 feet, rather than the maximum 35 feet, and for the sign location to be 11 feet from the road right-of-way setback rather than the minimum 25 feet.

<sup>3</sup> In 1991, a permit (91-0833) was issued for installation of an illuminated freestanding sign to be a total height of 45 feet with a 7' x 18' sign and a 5' x 8' changeable sign.

<sup>4</sup> In 1994, a permit (94-7175) was issued for the replacement and enlargement of the freestanding sign to be a 216 square foot double-sided illuminated sign. Research by zoning staff indicates that the Ordinance prior to 2006 was open to interpretation, which may have led to the sign being described at 216 square feet instead of 432 square feet.

<sup>5</sup> "When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive ("or"), Maryland court 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).

“Undue hardship” may be found when: (1) strict compliance with the Ordinance would prevent the applicant from securing a reasonable return from or to make reasonable use of the property; and (2) the difficulties or hardships are peculiar to the property and contrast with those of other property owners in the same district; and (3) the hardship is not the result of the applicant’s own actions (Ordinance §25.56(B)).

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, Appellant’s representative testified that this case presents an undue hardship on Appellant if not allowed to advertise on the existing freestanding pole, due to the difficulty and considerable cost of constructing a new sign along Wesel Boulevard, including the likelihood of needing to secure an easement on adjacent property where such a second sign would be better placed.

The Board considered that if approved, no more square footage would be allowed on this freestanding pole, to which Appellant testified that such a condition would be acceptable.

The Board finds that for the variance requested in this case, the particular location of the existing freestanding sign and the orientation of the shopping center, together with the new tenant being an urgent care medical facility, and the considerable difficulty of placement of a second sign along Wesel Boulevard, all combine to place an undue hardship on Appellant (and the property owner) if the Ordinance were strictly enforced. The undue hardship would prevent Appellant from making a reasonable use of the subject property, the difficulties or hardships identified and testified to by Appellant are peculiar to the subject property and contrast with those of other property owners in the same district, and the hardship is not the result of Appellant’s own actions.

Therefore, Appellant’s request for a variance from the 300 square foot maximum total sign area to 688 square feet for placement of an additional double-sided illuminated commercial sign of 6’ high x 18’ wide on an existing freestanding pole

sign located on the subject property is GRANTED, by a vote of 5-0. Said variance is granted upon the conditions that: (1) no additional sign square footage will be allowed on the existing freestanding sign pole located on the subject property, and (2) the square footage and placement of said proposed sign will be consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Paul Fulk, Chair

**Date Issued: June 11, 2021**

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