

## BOARD OF APPEALS

May 26, 2021

### AGENDA

**DOCKET NO. AP2021-015:** An appeal was made by Terry & Jill Wile for a special exception for a resident business in a dwelling for a reflexology business on property owned by the Appellants and located at 25520 Warren Avenue, Cascade, Zoned Rural Village. 6:00 pm **-GRANTED**

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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 17, 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**

**TERRY & JILL WILE**

**APPELLANTS**

**APPEAL NO. AP2021-015**

**OPINION**

Terry and Jill Wile (hereinafter, "Appellants") request a special exception to allow the continuation of a reflexology office as a resident business at the subject property. The subject property, owned by Appellants, is located at 25520 Warren Avenue, Cascade, Maryland, and is zoned Rural Village. The Board held a public hearing on the matter on May 26, 2021.<sup>1</sup>

The appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County, Maryland (hereinafter, the "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 25520 Warren Avenue, Cascade, Maryland. The subject property is zoned Rural Village (RV).
2. The subject property is improved by a 1½ story single-family dwelling comprising 1,125 square feet of above-ground living area, situated on 0.25 acres.
3. At some time prior to September 2020, Appellants obtained permits to make improvements to an existing room of their home, for the purpose of turning the

<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.

room into a home office for Mrs. Wile to operate a reflexology business (hereinafter, the "Business") in said home office. A final use & occupancy determination was issued, and Mrs. Wile has operated the Business in her home office since September 2020.

4. A special exception is required to operate a resident business in a home in the RV zoning district (Ordinance §3.3(1)(J)).

5. Upon becoming aware of the need for a special exception to operate a resident business in Appellants' home, Appellants applied for a special exception as required by the Ordinance.

6. Mrs. Wile sees between 3-4 clients a day Monday through Thursday at the subject property. The earliest appointment begins at 10:00 a.m., and the latest appointment ends at 7:00 p.m. Each appointment lasts one hour, with a minimum of one-half hour between each appointment. She travels to the homes of her non-mobile clients.

7. Parking for clients at the subject property is on a double-wide macadam driveway along the East side of the home. Clients park in the lane closest to the home, and Appellants park their personal vehicles in the other lane. Since the appointments do not overlap, there is never more than one client vehicle at the subject property at a time.

8. The subject property appears to have sufficient sight-lines for vehicles to egress from the driveway onto Warren Avenue (a straight road with no appreciable grade in both directions) and there is no vehicle parking on Warren Avenue, so it does not appear that traffic from operation of the Business would be any greater than for a typical home on that road.

9. Appellants have no signage for the Business anywhere on the subject property.

10. The Business has a separate entrance, accessible from the client-lane of the driveway into the home office. A dual-bulb flood light is affixed outside said entrance to provide light for the driveway and office entrance; however, the flood light has been in that location and used for many years prior to operation of the Business.

11. Although Appellants expect the Business to be operated out of the home office on a permanent basis, Appellants do not anticipate any increase in clients, nor



will they to rent the home office for use by anyone else.

12. Approximately one dozen letters and emails were submitted by nearby-residents and current clients of Mrs. Wile in support of Appellants' application for the special exception. One person in opposition to the application (Appellants' next-door neighbor to the East) provided written testimony and photographs.

#### **RATIONALE**

The Board has authority to grant a special exception pursuant to Section 25.2(b) of the Ordinance. 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" (Ordinance, Article 28A).

In the instant case, Appellants testified that Mrs. Wile provided reflexology services for approximately 13 years out of an office in Waynesboro, Pennsylvania with 2 other practitioners (now retired), until Covid-19 restrictions in that state made it nearly impossible for her to continue to practice there. Appellants further testified that Mrs. Wile began to operate the Business at the subject property in September 2020 after the improvements were completed, and that if the special exception was granted, the Business would remain at the subject property permanently.

Appellants provided testimony and photographic evidence to show the exterior of the subject property in relation to the nearest neighbors and to Warren Avenue. The Board discussed and considered said testimony and photographic evidence given in support of Appellants' contention that the Business would not present adverse effects greater than other similar uses in the RV district. The Board also read into evidence and considered all of the letters and emails from neighbors and clients of Mrs. Wile who were in support of Appellants' application. Finally, the Board read into evidence and considered the letter and photographs received from Appellants' next-door neighbor who expressed opposition to Appellants' application.

The Board notes that there is an long-existing business (auction house) contiguous to the Western boundary of the subject property; therefore, this Business is not the first to operate on Warren Avenue. The Board also notes with favor Appellants' significant and prudent efforts taken to minimize any negative effects of the Business on surrounding properties, including the limited number of clients using the Business,

an appointment-only clientele (i.e., no walk-ins) with no expectation or desire to increase the numbers of clients, no signage for the Business, small amount of client vehicular traffic, the reasonable days and hours of operation for the Business, limited lighting for the Business entrance, and a lack of increased noise, odors, or other sensory elements that might impact surrounding properties. The Board finds that the evidence presented by the neighbor in opposition to the application is insufficient to overcome the weight of Appellants' testimony, photographic evidence, the evidence of others in support of the Business at the subject property, and the Board's own consideration of all the evidence before it.

The Board finds that the current use at the subject property currently has 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, the Board concludes that this appeal meets the criteria for a special exception, secures public safety and welfare, otherwise conforms to and upholds the spirit of the Ordinance, and is compatible with the existing neighborhood.

Therefore, Appellants' request for a special exception to establish and continue to operate a reflexology office as a resident business at the subject property is GRANTED, by a vote of 5-0. Said variance is granted upon the condition that operation of the resident business will continue to be consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Paul Fulk, Chair

**Date Issued: June 25, 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.