

BOARD OF APPEALS

September 1, 2021

County Administration Building, 100 W. Washington St., Meeting Room 2000, Hagerstown, at 6:00 p.m.

AGENDA

DOCKET NO. AP2021-023: An appeal was made by Dahbura Family Limited Partnership for a special exception for a corporate office and technical center to include research and development relating to granular building materials and agricultural products to be established in existing commercial structure on property owned by the appellant and located at 13424 Pennsylvania Avenue, Hagerstown, Zoned Business General.

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 August 23, 2021. Any person desiring a stenographic transcript shall be responsible for supplying a competent stenographer.

The Board of Appeals reserves the right to vary the order in which the cases are called. Please take note of the Amended Rules of Procedure (Adopted July 5, 2006), Public Hearing, Section 4(d) which states:

Applicants shall have ten (10) minutes in which to present their request and may, upon request to and permission of the Board, receive an additional twenty (20) minutes for their presentation. 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.

Those Applicants requesting the additional twenty (20) minutes shall have their case automatically moved to the end of the docket.

For extraordinary cause, the Board may extend any time period set forth herein, or otherwise modify or suspend these Rules, to uphold the spirit of the Ordinance and to do substantial justice.

Paul Fulk, Chairman
Board of Zoning Appeals

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

DAHBURA FAMILY LIMITED PARTNERSHIP

APPEAL No. AP2021-023

APPELLANT

* * * * *

OPINION (revised)¹

Dahbura Family Limited Partnership (hereinafter, "Appellant") requests a special exception to allow the establishment and operation of a corporate office and technical center to include research and development at the subject property. The subject property, owned by Appellant, is located at 13424 Pennsylvania Avenue, Hagerstown, Maryland, and is zoned Business, General. The Board held a public hearing on the matter on September 1, 2021.

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. Appellant is the owner of the subject property located at 13424 Pennsylvania Avenue, Hagerstown, Maryland. The subject property is zoned Business, General (BG).
2. The subject property is approximately 2.27 acres in area and is improved by a three-story commercial building with a basement and associated parking.
3. Appellant purchased the subject property in 2004 and had the current building and other improvements constructed thereon.

¹ Due to an inadvertent drafting error, the original Opinion stated that the special exception use requested is "to allow the establishment of a short-term residential rental." This revised opinion hereby corrects throughout that the special exception use requested is for the establishment and operation of a corporate office and technical center to include research and development. This revised Opinion shall relate back to the date of issuance of the original Opinion.

4. Appellant desires to lease portions of the basement and first floor of the building to one of its current tenants in the building (Specialty Granules, LLC; hereinafter, the "Tenant") for the relocation of Tenant's current "technical center"² (hereinafter, the "Technical Center") to conduct research and development activities. Said Technical Center is planned to occupy approximately 17,465 square feet (12,229 sq. ft for laboratory space and 5,236 sq. ft. for lab support office uses).

5. A special exception is required to operate a research and development facility³ in the BG zoning district (Ordinance §12.2(e)).

6. At the Technical Center, Tenant intends to continue its current research and development (hereinafter, "R&D") on mineral products used in asphalt roofing, industrial minerals and aggregates, mineral-based agricultural products, and carbon capture and storage technologies. Activities include new product development, geology and mineral durability testing, soil and crop science, and product quality control.

7. The Technical Center will use small-scale equipment for such R&D activities, including rock crushing and sieving equipment, granule coloring kilns, accelerated weathering chambers, and standard laboratory high temperature and humidity-controlled ovens. Materials used at the Technical Center are non-hazardous, and the reagents used with the materials are used at low levels and involve strict handling, storage, and disposal protocols in compliance with applicable regulations.

8. The Technical Center will not involve any work, testing, or storage outside the Technical Center. A small dust collector will be placed on the exterior of the building, with duct work to those stations within the Technical Center where dust may be generated. Said dust collector only operates when a work station ventilation hood is turned on, and noise from the dust collector is similar to that of normal public high school laboratories.

² The tenant's current technical center is located on Charles Street in the City of Hagerstown.

³ A "research and development facility" is defined as "[a] building...for which an overall plan has been approved by the Planning Commission, designed with open space and compatible with the adjacent community, to be used for the inquiry and investigation of sources and limited to the basic and applied research phase of the inquiry; not including however, any manufacturing, industrial operations or pilot plant involving machines or operations normally associated with production or assembly lines or the production of goods in quantity above that needed for product testing and evaluation." Ordinance, §28A

9. Tenant's current Charles Street staff of 16 employees will relocate to the Technical Center. No additional parking, site lighting, or signage is needed or planned. Operations at the Technical Center will be conducted Monday through Friday from 8:00am-5:00pm.

10. Although Tenant has experienced some vandalism and theft at its current facility, Tenant's desire to relocate to the subject property is principally to enlarge and modernize its facility and capabilities. Tenant is not aware of any complaints from neighbors regarding the operations at its current facility.

11. An architect and a surveyor/engineer testified on behalf of the Appellant and the Tenant. A schematic drawing was submitted into the record, showing the layout of the proposed Technical Center. No other persons testified in support of the application, and no one testified in opposition.

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, Norman Morin, Principal Architect with Bushey, Feight Morin Feight Architects, and Stephen Cvijanovich, Senior Project Manager with Fox & Associates, LCC, provided testimony, written, and photographic evidence of the subject property on behalf of Appellant and Tenant, and the Board made findings of fact regarding the same as set forth hereinabove. The Board then discussed and considered said testimony and evidence given in support of the contention that establishment and operation of the Technical Center at the subject property will not present adverse effects greater than other similar uses in the BG district.

The Board notes that the proposed operation will be similar in scope and function to Tenant's current operation at its Charles Street location. The Board also notes with favor the testimony regarding the efforts and technology proposed for minimization/elimination of emissions, dust, and noise, that no additional lighting or signage is being proposed, and that current parking at the subject property is sufficient for the additional employees that will be working at the Technical Center. In addition,

the Board is satisfied that the proposed use generally will be harmonious with the current mix of tenants in the building at the subject property, and that there will be an overall lack of increased noise, odors, or other sensory elements that might impact surrounding 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, 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 for the establishment and operation of a corporate office and technical center to include research and development at the subject property is GRANTED, by a vote of 5-0. Said variance is granted upon the condition that establishment and operation of the corporate office and technical center to include research and development will be conducted in a manner consistent with the testimony and evidence presented herein and in compliance with all other applicable governmental requirements.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: October 1, 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.