

BOARD OF APPEALS

September 15, 2021

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

AGENDA

DOCKET NO. AP2021-024: An appeal was made by Peter Gillis for a special exception to establish a second dwelling on parcel improved with dwelling and a variance from the density requirement of 1 dwelling unit per 5 acres to 2 dwelling units on 4.73 acres on property owned by Paul & Cheryl Gillis and located at 13342 Little Antietam Road, Hagerstown, Zoned Agricultural, Rural. **-GRANTED WITH CONDITIONS**

DOCKET NO. AP2021-025: An appeal was made by Benevola Solar Energy Center LLC for a special exception to establish a solar energy generating system "SEGS" on parcel designated as a priority preservation area with a industrial mineral floating zone on property owned by Martin Marietta Materials Inc and located at 20301 Benevola Church Road/Boonsboro Quarry, Boonsboro, Zoned Agricultural, Rural with a Industrial Mineral Floating Zone. **-POSTPONE TILL SEPTEMBER 29 HEARING.**

DOCKET NO. AP2021-026: An appeal was made by B&E Services for a special exception to establish a professional office for HVAC company in structure on property owned by FHCPM LLC and located at 13316 Marsh Pike, Hagerstown, Zoned Residential Suburban. **- GRANTED**

DOCKET NO. AP2021-027: An appeal was made by 17424 Virginia Avenue LLC for a variance from the required 10,000 sq. ft. lot area to 6,316 sq. ft. and a variance from the side yard setback requirement of 10 ft. to 3 ft. for parcel improved with two family dwelling on property owned by the appellant and located at 17424 Virginia Avenue Units A & B, Hagerstown, Zoned Residential Urban. **- GRANTED WITH CONDITIONS**

DOCKET NO. AP2021-028: An appeal was made by Doris Rankin for a variance from the required 100 ft. setback to 47 ft. for existing animal husbandry structure on property owned by the appellant and located at 14535 Marsh Pike, Hagerstown, Zoned Agricultural, Rural and Rural Village. **- GRANTED**

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 September 6, 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**

PETER GILLIS

APPELLANT

APPEAL No. AP2021-024

OPINION

Peter Gillis (hereinafter, "Appellant") requests a special exception to establish a second dwelling on a parcel improved with an existing single-family dwelling, and a variance from the density requirement of one dwelling unit per 5 acres to two dwelling units on 4.73 acres, both situated on the subject property. The subject property, owned by Appellant and his wife, is located at 13342 Little Antietam Road, Hagerstown, Maryland, and is zoned Agricultural (Rural). The Board held a public hearing on the matter on September 15, 2021.

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 co-owner (with his wife) of the subject property located at 13342 Little Antietam Road, Hagerstown, Maryland. The subject property is zoned Agricultural (Rural) (A(R)).

2. The subject property contains approximately 4.73 acres, improved by a 1-story single-family dwelling of approximately 2,296 square feet of above-ground finished living space. Appellant desires to construct a detached 3-bay garage with storage space and a second dwelling above said garage (hereinafter, the "Garage").

3. A buildable lot within the A(R) zoning district is limited to one principal

permitted residential use (Ordinance, §4.5); therefore, a special exception is required for a second dwelling unit on the same buildable lot. Furthermore, the maximum density within the A(R) zoning district is one dwelling unit per 5 acres (Ordinance, §5A.3); therefore, a variance is required from said dimensional requirement to allow for a second dwelling on a smaller lot.

4. Appellant (along with his wife) purchased the subject property on July 30, 2021 from his parents (now at retirement age), who had owned said property since 2008.

5. Appellant desires to construct the Garage because the existing structures on the subject property are insufficient to hold Appellant's 34-foot recreational vehicle, the personal property of Appellant, his wife, their three teenage children, and Appellant's parents, and the necessary equipment and supplies used by Appellant in his profession (search & rescue K-9 trainer for the Federal Emergency Management Agency) and with Prescott, his K-9 partner.

6. Appellant's parents do not wish to take on a new large financial obligation of owning their own home, and Appellant desires to assist his parents in this regard by allowing them to live on the subject property. However, there is insufficient living space in the current dwelling for seven individuals. Therefore, Appellant would like to use the approximately 1,200 square feet above the proposed Garage as a second dwelling unit for his parents.

7. Appellant's current employment is in Montgomery County and requires a minimum 48-hour work week. Allowing his parents to reside on the subject property will enable them to assist Appellant's wife with light maintenance and upkeep of the subject property. In addition, it will be more practical, convenient, and less costly for Appellant and his wife to provide Appellant's parents with living assistance as required.

8. If and when Appellant's parents no longer live on the subject property, the second dwelling will only be used to house family and guests on a temporary basis for no monetary compensation. Appellant agrees to seek prior approval from the Board should it be desired that the second dwelling be used as a short-term rental as defined in the Ordinance.

9. Appellant does not plan for the second dwelling above the Garage to have a separate address designation, unless required by law or a County agency.

10. The proposed location of the Garage on the subject property appears to be appropriate due to the limitations and existing conditions thereon, including the floodplain area that infringes on the entire northern half of the property, a powerline right of way that diagonally bisects the property from northwest to southeast, the existing septic field in the center of the property, and the existing driving path from the existing dwelling to an existing barn that is located directly behind the proposed Garage. In addition, the proposed location for the Garage is screened from the most-affected neighboring properties by existing mature trees.

11. Due to the large area of the subject property, and the natural screening provided by the numerous trees thereon, the proposed use will not create significant impacts upon surrounding properties.

12. The subject property is not subdivided, so if sold, it must be conveyed in its entirety.

13. Two contiguous neighbors and the neighbor immediately across the road submitted letters in favor of the application.

14. No other persons testified in support of or in opposition to the application.

15. A letter was received (and read into the record) from the Washington County Division of Plan Review and Permitting which states that "[t]he proposed structure should be located outside the floodplain" on the subject property, as indicated on the documents submitted by Appellant with the application.

16. A letter was received (and read into the record) from the Washington County Department of Planning and Zoning which states that the County Comprehensive Plan "does not specifically address land use policies relating to the number of dwelling units per lot of record," but "does extensively elaborate on the need to limit residential density in rural areas due to impacts on infrastructure, environmental resources, and agricultural resources." The letter further states that "the establishment of a new residential unit in this area would be inconsistent with Comprehensive Plan policies."

RATIONALE

Part I - Special Exception

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, Appellant testified regarding the need for the Garage and the reasons for desiring approval for a second dwelling unit to be established in the upper level of said Garage, initially to be used by Appellant's parents. Appellant also provided the Board with an aerial photo of the subject property and nearby properties and three letters from neighbors in support of the application.

The Board notes its appreciation that Appellant applied on his own for the special exception prior to commencement of any construction of the proposed Garage. Further, the Board commends Appellant's desire to take care of his parent and keeping the extended family together. The Board also appreciates that Appellant does not intend to rent the proposed second dwelling to others after his parents are no longer living thereon, and that Appellant acknowledges the need for Board approval should this intention change.

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. Appellant's request for a special exception to establish a second dwelling on the subject property is GRANTED, by a vote of 5-0. Said special exception is granted upon the conditions that: (1) the second dwelling shall not be rented to any occupants without first applying to the Board for a short-term rental special exception; and (2) the construction and use of the second dwelling will be consistent with the testimony and evidence presented herein and in compliance with all other applicable government requirements.

Part II - Variance

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship (Ordinance §§25.2(c) and 25.56).¹ "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, 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 testified that due to the uniqueness of the subject property, that is, the size and existing limitations thereon as set forth in the findings of fact, all of which existed at the time Appellant acquired same, the circumstances present a practical difficulty, since the lot is not adequately sized to comply with the density requirement of the Ordinance.

The Board finds that for the variance requested in this case, the size and other

¹ "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).

existing limitations of the subject property, the reasonableness of providing living accommodations for Appellant's elderly parents, and the limited square footage of the proposed second dwelling, all combine to result in a practical difficulty on Appellant if the Ordinance were strictly enforced. The Board also finds that this variance will place almost no burden or impact on infrastructure or environmental and agricultural resources. For these reasons and the findings of fact set forth hereinabove, the Board finds that strict compliance would prevent Appellant from using the subject property for a permitted purpose or render conformance unnecessarily burdensome (if not impossible), a lesser relaxation that that applied for would not give substantial relief, and granting the variance will observe the spirit of the Ordinance and secure public safety and welfare.

Therefore, Appellant's request for a variance from the minimum density requirement of 5 acres for a single dwelling unit on a property to 4.73 acres for two dwelling units on the subject property is GRANTED, by a vote of 5-0. Said variance is granted upon the conditions that: (1) no further dwelling units may be placed on the property; and (2) the construction and location of the dwelling will be consistent with the testimony and evidence presented herein and in compliance with all other government requirements.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: October 15, 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**

B&E SERVICES

APPELLANT

APPEAL No. AP2021-026

OPINION

B&E Services (hereinafter, "Appellant") requests a special exception to allow the establishment and operation of a professional office at the subject property in support of its heating, ventilation, and air conditioning business. The subject property, owned by FHCPM LLC, is located at 13316 Marsh Pike, Hagerstown, Maryland, and is zoned Residential, Suburban. The Board held a public hearing on the matter on September 15, 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. FHCPM LLC owns the subject property located at 13316 Marsh Pike, Hagerstown, Maryland. The subject property is zoned Residential, Suburban (RS).

2. The subject property is improved by a two-story mixed-use structure with attached storage/warehouse buildings comprising approximately 8,522 square feet of above-ground enclosed area, situated on approximately 35,985 square feet of land. The subject property currently houses a firearms retail shop and a residential apartment in the two-story structure.

3. The property owner desires to sell the subject property to Appellant, which owns and operates a heating, ventilation and air-conditioning ("HVAC")

business providing residential and light commercial service and installations. Appellant intends to establish and operate a professional office (including equipment and supplies storage)(hereinafter collectively, the "Office") at the subject property to support the HVAC business, said Office to be housed in a part of the two-story structure separate from the existing retail business and apartment.

4. A special exception is required to operate a professional office in the RS zoning district (Ordinance, §8.2(c)). The property owner has authorized Appellant to make application for a special exception for the intended use at the subject property.

5. Much of the two-story structure and the storage/warehouse buildings previously were used for many years by a lawn and garden retail business.

6. Appellant plans to operate the Office on the lower-level of the two-story structure and to store all of its equipment and supplies in the storage/warehouse buildings in the rear.

7. The Office will be staffed by four employees, two full-time and two part-time. Technicians that perform installation and service calls will come to the subject property only for equipment and supplies as needed. Customers will not be coming to the Office, and all deliveries from suppliers are local and do not involve large trucks.

8. Hours of operation for the Office are expected to be between 7:00 a.m. and 5:00 p.m. Monday through Friday, with occasional need to be at the subject property at times and days outside this schedule to pick up supplies and/or equipment to handle emergency calls.

9. There is sufficient parking for staff and technicians at the subject property on a large macadam parking area in front of and around the South side of the two-story structure.

10. Appellant currently has no plans for additional lighting or signage at the subject property.

11. One letter was submitted by the adjoining neighbor to the North of the subject property. The letter specifically stated it was "not intended to support or object to the application" and addressed a topic of concern not related to the application. There were no other letters or testimony from persons in favor of or opposed to the application.

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, an owner of Appellant testified that operations at the subject property would be limited to office activities in support of the HVAC business, such as billing, dispatch, and gear-up of technicians to go on installation and service calls. Appellant further testified that all storage of equipment and supplies would be solely in the storage/warehouse buildings at the rear of the subject property. In addition, Appellant noted that persons who will work on-site are all family members, including the two owners of the HVAC business, and that the intended use of the subject property by the Office would be less intensive than the previous lawn and garden retail establishment - less traffic, parking, noise, and no fumes or smells.

The Board discussed and considered the testimony and other evidence given in support of Appellant’s contention that the Office would not present adverse effects greater than other similar uses in the RS district. The Board also read into evidence and considered the letter submitted by the adjoining neighbor.

The Board notes that Appellant’s business activities will be somewhat similar to the previous lawn and garden business at the subject property, with the benefit of less traffic and no customer visits. The Board also notes with favor that the proposed Office will not have any signage, will have reasonable days and hours of operation, no additional lighting, and a lack of increased noise, odors, or other sensory elements that might impact surrounding properties. The Board interprets the letter received by the adjoining neighbor as “neutral” with regard to the application at issue and holds that said letter does not raise any concerns to affect the decision herein.

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, Appellant's request for a special exception to establish and operate a professional office (including equipment and supply storage) for its HVAC business at the subject property is GRANTED, by a vote of 5-0. Said special exception is granted upon the condition that establishment and operation of said professional office (including equipment and supply storage) 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 15, 2021

Notice of Appeal Rights

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

17424 VIRGINIA AVENUE, LLC

APPELLANT

APPEAL No. AP2021-027

* * * * *

OPINION

17424 Virginia Avenue, LLC (hereinafter, "Appellant") requests a variance from the minimum 10,000 square feet lot area requirement to 6,316 square feet and a variance from the minimum 10 foot side yard setback to 3 feet for an existing two-family dwelling (hereinafter, the "Dwelling") located on the subject property. The subject property is located at 17424 Virginia Avenue, Units A & B, Hagerstown, Maryland, and zoned Residential, Urban. The Board held a public hearing on the matter on September 15, 2021.

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 are owners of the subject property located at 17424 Virginia Avenue, Units A & B, Hagerstown, Maryland. The subject property is zoned Residential, Urban (R(U)).

2. A two-family, two-story dwelling is situate on the subject property, which is a rectangular lot currently containing 7,567 square feet. The Dwelling was "constructed" on the subject property by a previous owner in 1947. Appellant acquired the subject property in 2008 in a non-arms-length transaction from the Virginia Avenue Baptist Church (hereinafter, the "Church").

3. Appellant desires to sell the subject property, and as part of the sale, intends to convey to the Church (located next-door at 17426 Virginia Avenue) a rectangular portion of the subject property comprising the northernmost 1,251 square feet thereof, together with a 1.6 foot strip along the eastern boundary line and behind the Dwelling. Since there is no off-street parking in the area, said conveyance will allow the Church to maintain parking it currently uses on the rectangular portion. Conveyance of said 1,251 square foot portion will reduce the overall lot area to 6,316 square feet, and will the side yard setback from the easternmost wall of the Dwelling to the proposed rear lot boundary to 3 feet.

4. Variances are required for the proposed reduction in lot area and side yard setback (Ordinance, §9.5(a)).

5. The subject property was platted prior to zoning regulations, is therefore undersized for current lot area and building setback requirements, posing significant challenges for any changes to be made to the subject property or to the Dwelling itself.

6. Appellant (and prior the Church) previously rented the Dwelling to missionaries, church workers, and church members, but less so in recent years, and the Dwelling currently is vacant. Appellant now desires to relieve itself of the ownership burdens of the subject property (e.g., maintenance, taxes, insurance, liability), sell the property to a third-party, and receive needed funds from said sale.

7. Appellant and Church intend to enter into cross-easements for parking, maintenance, and snow plowing for the triangular area of the 1,251 square foot portion to be conveyed to the Church, and to allow the current and future owners of the Dwelling to maintain and repair to easternmost side of the Dwelling.

8. Appellant and Church will put up appropriate signage to denote Church parking and Dwelling parking, and the Church agrees to place adequate and appropriate parking bumpers along the width of the easternmost side of the Dwelling, within and parallel to the Church property's westernmost property boundary line.

9. No other persons testified or provided evidence in support of or in oppositions to the application, and nothing was received from any government agencies.

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).¹ "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, 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 surveyor and engineer, Fred Frederick of Frederick Seibert & Associates, Inc., testified that the circumstances (as noted by the Board in the findings of fact hereinabove) present a practical difficulty if Appellant must comply strictly with the lot area and setback requirements. Mr. Frederick stressed the unusual shape of the subject property, its location on an acute corner bordered by two busy streets, lack of off-street parking, the current position of the Dwelling in relation to the easternmost

¹ "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).

boundary line already being only half of the required set-back requirement, and the fact that none of these circumstances are the result of Appellant's (or for that matter the predecessor owner's, *i.e.*, the Church's) own actions. He further noted that Appellant is seeking only the minimum necessary for relief, and that strict conformance with the Ordinance requirements would be unnecessarily burdensome (if not impossible).

The Board finds that for the variances requested in this case, and upon the testimony and evidence presented herein, that the uniqueness and existing limitations of the subject property, and the impracticality of requiring strict compliance with the Ordinance, all combine to result in a practical difficulty on Appellant if the Ordinance were strictly enforced. For these reasons, the Board finds that strict compliance would prevent Appellant from using the subject property for a permitted purpose or render conformance unnecessarily burdensome (if not impossible), a lesser relaxation that that applied for would not give substantial relief, and granting the variances will observe the spirit of the Ordinance and secure public safety and welfare.

Therefore, Appellant's request for variances from: (1) the minimum 10,000 square foot lot area to 6,316 square feet; and (2) from the minimum 10 foot side yard setback to 3 feet for the subject property are GRANTED, both by a vote of 5-0. Said variances are granted upon the conditions that: (1) the Church shall place adequate and appropriate parking bumpers along the width of the easternmost side of the Dwelling, within and parallel to the Church property's westernmost property boundary line; and (2) that the property will continue to be consistent with the testimony and evidence presented herein and in compliance with all other applicable government regulations.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: October 15, 2021

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

DORIS RANKIN

APPELLANT

APPEAL No. AP2021-028

OPINION

Doris Rankin (hereinafter, "Appellant") requests a variance from the required minimum 100 foot setback to 47 feet for an existing animal husbandry structure located on the subject property (Ordinance §5A.5(a), modified by §22.94(a)). The subject property is located at 14535 Marsh Pike, Hagerstown, Maryland, and is split-zoned Rural Village and Agricultural (Rural). The Board held a public hearing on the matter on September 15, 2021.

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 the owner of the subject property located at 14535 Marsh Pike, Hagerstown, Maryland and was acquired in 2001. The subject property is split-zoned Rural Village (RU) and Agricultural, Rural (A(R)).

2. The subject property is an irregularly shaped lot containing 43.49 acres, portions of which are fenced-in. The animal husbandry structure (hereinafter, the "Structure") at issue herein is located in the A(R)-zoned portion of the subject property.

3. Appellant intends to subdivide the subject property and convey 36 acres, including the Structure (all zoned A(R)) to a neighbor farmer who currently farms said 36 acres and has done so for many years. Appellant intends to keep the remaining acreage and existing single-family dwelling thereon.

4. The new proposed property line for the acreage containing the Structure follows the existing ancient fence line and is 47 feet at its closest point along the northwest side of the Structure.

5. The most-affected property owner is Appellant. The current farmer also farms nearly all the surrounding properties and has alternate access to the 10 acres and Structure and the other fields.

6. No other persons testified or provided evidence in support of or in oppositions to the application, and nothing was received from any government agencies..

9. Appellant is seeking the variance due to the impracticality of moving the Structure, and the practicality of following the existing and ancient fence line closest to the Structure.

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).¹ "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)).

¹ "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).

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 surveyor and engineer, Fred Frederick of Frederick Seibert & Associates, Inc., testified that the circumstances (as noted by the Board in the findings of fact hereinabove) present a practical difficulty if Appellant must comply strictly with the lot area and setback requirements. He further testified as to the impracticality of moving the Structure and the common surveying practice of attempting, to the extent possible, to follow the existing and ancient fence lines when subdividing agricultural properties.

The Board finds that for the variance requested in this case, the large acreage of the subject property, especially the acreage to be sold with the Structure, the current and decades-old agricultural use of said acreage, and the impracticality of moving the Structure, all combine to impose an undue hardship on Appellant if the Ordinance were strictly enforced. The Board also found it practical, reasonable, and appropriate in this situation to follow the common surveying practice of using the existing and ancient fence line along the northwestern side of the Structure for the proposed subdivision. For these reasons, the Board finds that strict compliance would prevent Appellant from securing a reasonable return from or to make reasonable use of the subject property, that the difficulties or hardships 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 the Appellant's own actions.

Therefore, Appellant's request for a variance from the minimum 100 foot setback to 47 feet for the existing animal husbandry structure on the subject property is GRANTED, by a vote of 5-0. Said variance is granted upon the condition that the location of the existing animal husbandry structure will continue to be consistent with

the testimony and evidence presented herein and in compliance with all other applicable government regulations.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: October 15, 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.