

BOARD OF APPEALS

April 24, 2024

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

AGENDA

AP2024-011: An appeal was filed by Jack Steich for a variance from the lot area of 5,000 sq. ft. to 3,750 sq. ft. and lot width from 35 ft. to 25 ft. for proposed subdivision of residential lot into two lots for future semi-detached dwellings on the property owned by the appellant and is the vacant lot located between 801 & 809 Interval Road, Hagerstown, Zoned Residential Urban.- **DENIED**

AP2024-012: An appeal was filed by Mark Myers for a variance from the 15 ft. side yard setback to 11 ft. for the existing single-family dwelling for future subdivision on property owned by the appellant and located at 14708 & 14710 National Pike, Clear Spring, Zoned Agricultural Rural. - **GRATNED**

AP2024-013: An appeal was filed by Seven Brew Coffee for a variance from the previously reduced number of parking spaces of 667 down to 610 for proposed drive-thru coffee shop on property owned by DK Valley Plaza LLC and located at 1701 Massey Boulevard, Hagerstown, Zoned Business General. - **GRANTED**

AP2024-014: An appeal was filed by First Breach LLC for an expansion of the previously approved special exception use of the explosive manufacturing/storage ammunition primers to now include small arm ammunition manufacturing/storage of smokeless propellant and the accessory use of a testing area for production produced and a variance from the required setback/buffer of this use to not be less than 1,000 ft. from any residential district/existing residential use on separate lot and or any residential portion of a mixed use district to 808 ft. from existing residential use on separate lot located at 18531 Showalter Road. Property is owned by New Heights Industrial Park LLC and is located at 18450 Showalter Road Bay 1 & 2, Hagerstown, Zoned Industrial General. - **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 April 15, 2024. 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.

Jay Miller, Chairman

Board of Zoning Appeals



WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P:240.313.2430 | F:240.313.2431 | Hearing Impaired: 7-1-1

ZONING APPEAL

Property Owner: Jack & Peggy Steich
11913 Cheryl Drive
Hagerstown MD 21742

Docket No: AP2024-011
Tax ID No: 18011530
Zoning: RU
RB Overlay: No

Appellant: Jack Steich
11913 Cheryl Drive
Hagerstown MD 21742

Zoning Overlay:
Filed Date: 04/02/2024
Hearing Date: 04/24/2024

Property Location: Interval Road
Hagerstown, MD 21740

Description Of Appeal: Variance from the lot area of 5,000 sq. ft. to 3,750 sq. ft. and lot width from 35 ft. to 25 ft. for proposed subdivision of residential lot into two lots for future semi-detached dwellings.

Appellant's Legal Interest In Above Property: Owner: Yes
Contract to Rent/Lease: No
Lessee: No
Contract to Purchase: No
Other:

Previous Petition/Appeal Docket No(s):

Applicable Ordinance Sections: Washington County Zoning Ordinance Section 9.5 (a)

Reason For Hardship: Strict compliance of the Ordinance would prevent the use of the property for a permitted purpose.

If Appeal of Ruling, Date Of Ruling:

Ruling Official/Agency:

Existing Use: Vacant Lot Proposed Use: Subdivision to create Two Residential Lots

Previous Use Ceased For At Least 6 Months: Date Ceased:

Area Devoted To Non-Conforming Use - Existing: Proposed:

I hearby affirm that all of the statements and information contained in or filed with this appeal are true and correct.

Handwritten signature of Jack Steich

Appellant Signature

State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 2 day of April, 2024.

Handwritten signature of Notary Public

My Commission Expires

Notary Public





WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P:240.313.2430 | F:240.313.2431 | Hearing Impaired: 7-1-1

AFFIDAVIT IN COMPLIANCE WITH SECTION 25.51(C)

Docket No: AP2024-011

State of Maryland Washington County, To Wit:

On 4/2/2024, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared Jack Steich and made oath in due form of law as follows:

Jack Steich will post the zoning notice sign(s) given to me by the Zoning Administrator in accordance with Section 25.51(c) of the Washington County Zoning Ordinance for the above captioned Board of Appeals case, scheduled for public hearing on 04/24/2024, and that said sign(s) will be erected on the subject property in accordance with the required distances and positioning as set out in the attached posting instructions.

Sign(s) will be posted on 04/09/2024 and will remain until after the above hearing date.

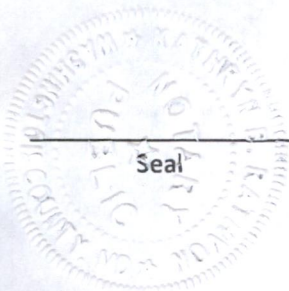
Jack Steich

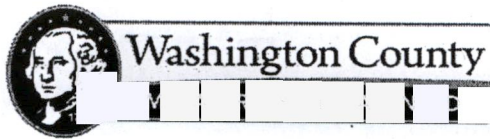
Sworn and subscribed before me the day and year first above written.

Notary Public



My Commission Expires





BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742 | P: 240.313.2430 | F: 240.313.2461 | Hearing Impaired:

7-1-1 WWW.WASHCO-MD.NET

Appeal for Variance

Appeal is hereby made for a variance from a requirement of the Washington County Zoning Ordinance as follows:

Location LOT 32, PLAT 125 . EMPTY LOT BETWEEN 801 INTERVAL RD + 809 INTERVAL RD

Appellant's present legal interest in above property: (Check One)

Owner (Including Joint Ownership) Lessee Contract to rent/lease

Contract to Purchase Other _____

Specify the Ordinance section and subsection from which the variance is desired:

SECTION 9.5

Specify the particular requirement(s) from which a variance is desired in that section or subsection:

MINIMUM LOT AREA

MINIMUM LOT WIDTH

Describe the nature and extent of the desired variance from Ordinance requirements: listed above:

LOT AREA FROM 5,000 ~~sq~~ to 3750 ~~sq~~

LOT WIDTH FROM 35 FT. TO 25 FT.

Describe reason(s) why the Ordinance requirement(s) in question would result in peculiar and/or unusual practical difficulties to or would impose exceptional or undue hardship upon the owner of the property if the requested variance were not granted:

Provide Detailed Explanation on Separate Sheet

Has any previous petition or appeal involving this property been made to the Board?

Yes No

If yes, list docket number(s): _____

I hereby certify that I have, to the best of my knowledge, accurately supplied the information required for the above referenced appeal.

Jack Steich
Signature of Appellant

11913 CHERYL DRIVE, HAGERSTOWN MD.
Address and of Appellant

JPSTEICH@AOL.COM
Email of Appellant

301-992-5144
Phone Number of Appellant

This appeal form is to be used to assist the customer in gathering the information necessary to submit an application. However, the application shall be processed in person.

This lot is 50' wide and 150' deep and is noted as Lot 32 on the subdivision plat known as Kailor's Addition to Hagerstown, dated 2 January 1914 and recorded at plat folio 125. **My plan is to subdivide this lot; build a semi-detached home and sell each side separately.** However, in order to do so I am requesting a variance to Section 9.5 of the Washington County Zoning Ordinance (the "Ordinance").

The lot is currently zoned RU as defined under Article 9 of the Ordinance and semi-detached dwellings are a permitted use. Section 9.5 of the Ordinance currently requires a minimum lot area of 5,000 sq. ft. and a minimum lot width of 35 ft. per lot. I am requesting that the minimum lot area be lowered to 3,750 sq. ft. and the minimum lot width be lowered to 25 ft. for each lot. (This request for variance is very similar to Appeal No. AP2018-015 which was granted on 5 July 2018 – subdivision plat 11630)

I am seeking the variance on the basis of Practical Difficulty. Strict compliance of the Ordinance would prevent the use of the property for a permitted purpose especially since current front, side and rear setbacks would be followed. The use of the property is permitted and is a long-standing established use of many surrounding properties. Also, strict compliance would have little practical benefit, as the proposed plan seeks to make positive use of a vacant and unused property and would observe the spirit of the Ordinance.

Finally, granting this variance will help achieve the goals set forth in the county's proposed comprehensive plan by, among other things:

- a. Provide a diverse range of housing for citizens, and
- b. Encourage infill development and revitalization.

Respectfully submitted,

Jack Steich

Adjoining Property Owners

801 Interval Road	Jose Robert Orellana	801 Interval Rd. Hagerstown, MD 21740
804 Interval Road	Euthenia Holdings, LLC	144 Boswell Rd. Smithsburg, MD 21783
808 Interval Road	Euthenia Holdings, LLC	144 Boswell Rd. Smithsburg, MD 21783
809 Interval Road	Euthenia Holdings, LLC	144 Boswell Rd. Smithsburg, MD 21783
810 Interval Road	Ronald H. Remsburg	12907 Oakhill Ave. Hagerstown, MD 21742
812 Jefferson Blvd	Richard Wilhide	812 Jefferson Blvd, Hagerstown, MD 21740
824 Jefferson Blvd	DLJ Mortgage Capital	3217 S. Decker Lake Dr. Salt Lake City UT 84119
830 Jefferson Blvd	Ronald Young	514 Forest View Rd Linthicum MD 21090

INTERVAL Rd.

50'

ZONED = RU

Semi-DETACHED

LOT AREA = 5,000 sq ft

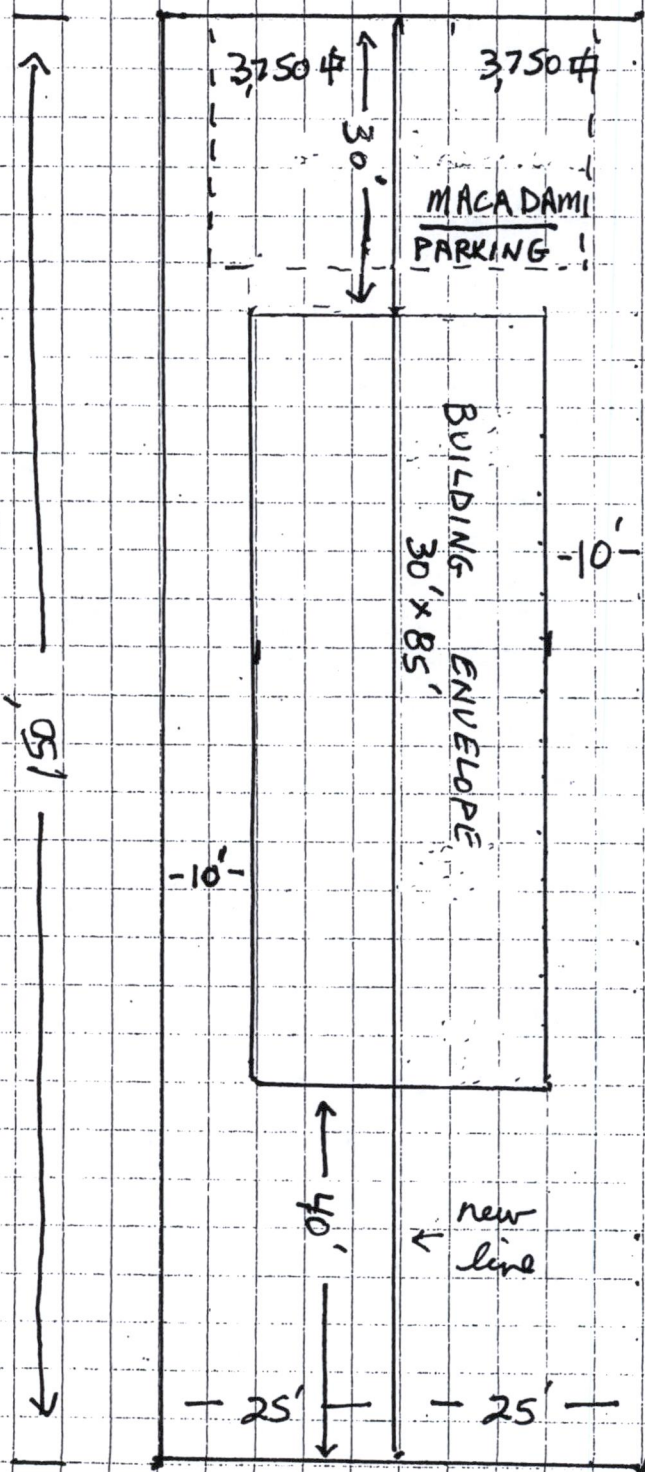
LOT WIDTH = 35'

FRONT = 25' (30' per plat)
125

SIDE = 10'

REAR = 40'

LOT 32 - plat 125



North

UNIMPROVED ALLEY

5'

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

JACH STEICH

Appellant

Appeal No.: AP2024-011

* * * * *

OPINION

Jack Steich (hereinafter “Appellant”) requests variances to reduce the required lot area from 5,000 square feet to 3,750 square feet and the required lot width from 35 feet to 25 feet for a proposed subdivision of a residential lot into two lots for future semi-detached dwellings at the subject property. The subject property is known as Lot 32, Plat 125, located on Interval Road, Hagerstown, Maryland and is zoned Residential, Urban. The Board held a public hearing in this matter on April 24, 2024.

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, along with his wife, are the owners of the subject property identified at Lot32, Plat 125 and located at Interval Road, Hagerstown, Maryland. The subject property is zoned Residential, Urban.

2. The subject property is approximately 50 feet wide and 150 feet deep and is currently an unimproved lot on Interval Road.

3. Appellant proposes to construct two semi-detached dwellings with the property line running along the party wall between the units. Once constructed, Appellant intends to sell each side separately.

4. The proposed building would be 30 feet wide and 59 feet long.
5. There are five (5) other properties along the street that have duplexes.
6. In the same neighborhood, but one (1) block over, the Student Trades Association previously obtained approval for setback variances so that a structure could be constructed.
7. The Board received a letter of opposition from Barbara Young.

Rationale

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 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 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).

Pursuant to Section 9.5 of the Zoning Ordinance, for a semi-detached dwelling the required minimum lot area is 5,000 square feet and the required lot width is 35 feet. Appellant is requesting to reduce those dimensions to 3,750 feet and 25 feet respectively,

¹ “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).

so that semi-detached dwellings can be constructed on the property. Appellant asserts to the Board that the practical difficulty lies within the restriction on use and marketability. Without the requested relief, Appellant could not divide the lot into two (2) lots and market both for sale. He argues that limiting the marketability is a hardship and that other properties have been permitted to do what he is now asking of the Board.

Appellant acknowledges that he could construct a duplex without the request variance relief, but that would result in only one (1) property with two (2) dwelling units to market. The Board notes that the immediate surrounding neighborhood consists of several duplex dwelling units similar that which could be constructed without a variance. Appellant even acknowledged that from the outside, there would be no discernable difference between a duplex and semi-detached dwellings. Although the Board certainly understands Appellant’s desire to make the subject property more potentially profitable, that in and of itself does not create a practical difficulty. Moreover, Appellant could construct the same building with two (2) dwelling units without subdividing or requiring a reduction in the lot area or width. The Board finds there is insufficient evidence to support a finding of practical difficulty or to justify reducing the subject property to two (2) 25-foot-wide lots.

Accordingly, the requested variances to reduce the required lot area from 5,000 square feet to 3,750 square feet for a proposed subdivision of a residential lot into two lots for future semi-detached dwellings at the subject property are DENIED, by a vote of 4-1.

BOARD OF APPEALS

By: Jay Miller, Chair

Date Issued: May 23, 2024

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.



WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P:240.313.2430 | F:240.313.2431 | Hearing Impaired: 7-1-1

ZONING APPEAL

Property Owner: Mark Myers
14806 National Pike
Clear Spring MD 21722

Docket No: AP2024-012

Tax ID No: 23000431

Zoning: A(R)

Appellant: Mark Myers
14806 National Pike
Clear Spring MD 21722

RB Overlay: No

Zoning Overlay:

Filed Date: 04/03/2024

Hearing Date: 04/24/2024

Property Location: 14708 National Pike
Clear Spring, MD 21722

Description Of Appeal: Variance from the 15 ft. side yard setback to 11 ft. for the existing single-family dwelling for future subdivision.

Appellant's Legal Interest In Above Property: Owner: Yes Contract to Rent/Lease: No
Lessee: No Contract to Purchase: No
Other:

Previous Petition/Appeal Docket No(s):

Applicable Ordinance Sections: Washington County Zoning Ordinance Section 5A.5

Reason For Hardship: The odd shape of the property.

If Appeal of Ruling, Date Of Ruling:

Ruling Official/Agency:

Existing Use: 2 Single-Family Dwellings Proposed Use: Subdivision for Two Residential Lots

Previous Use Ceased For At Least 6 Months: Date Ceased:

Area Devoted To Non-Conforming Use - Existing: Proposed:

I hereby affirm that all of the statements and information contained in or filed with this appeal are true and correct.

Handwritten signature of the appellant over a horizontal line, with the text 'Appellant Signature' below it.

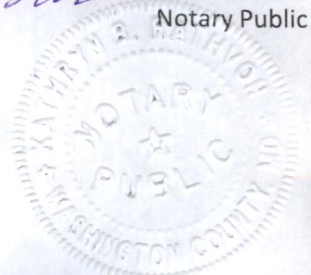
State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 3 day of April, 2024.

My Commission Expires

Handwritten signature of the notary public over a horizontal line, with the text 'Notary Public' below it.

Kathryn B Rathvon
NOTARY PUBLIC
WASHINGTON COUNTY
MARYLAND
MY COMMISSION EXPIRES NOVEMBER 07, 2025





WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P:240.313.2430 | F:240.313.2431 | Hearing Impaired: 7-1-1

AFFIDAVIT IN COMPLIANCE WITH SECTION 25.51(C)

Docket No: AP2024-012

State of Maryland Washington County, To Wit:

On 4/3/2024, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared Frederick Seibert & Associates and made oath in due form of law as follows:

Frederick Seibert & Associates will post the zoning notice sign(s) given to me by the Zoning Administrator in accordance with Section 25.51(c) of the Washington County Zoning Ordinance for the above captioned Board of Appeals case, scheduled for public hearing on 04/24/2024, and that said sign(s) will be erected on the subject property in accordance with the required distances and positioning as set out in the attached posting instructions.

Sign(s) will be posted on 04/09/2024 and will remain until after the above hearing date.

Frederick Seibert & Associates

Sworn and subscribed before me the day and year first above written.

Notary Public



Seal

My Commission Expires

Kathryn B Rathvon
NOTARY PUBLIC
WASHINGTON COUNTY
MARYLAND
MY COMMISSION EXPIRES NOVEMBER 07, 2025



WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P: 240.313.2430 | F: 240.313.2431 | Hearing Impaired: 7-1-1

BOARD OF ZONING APPEALS

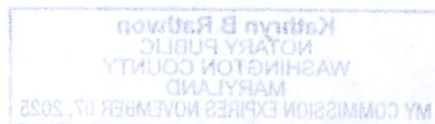
ATTENTION!

Posting Instructions

The premises MUST be posted in accordance with the following rules:

1. The sign must be posted a minimum of fourteen (14) days prior to the public hearing Section 25.51(c) Property upon which the application or appeal is concerned shall be posted conspicuously by a zoning notice no less in size than twenty-two (22) inches by twenty-eight (28) inches at least fourteen (14) days before the date of the hearing.
2. The sign must be placed on the property within ten (10) feet of the property line which abuts the most traveled public road.
3. The sign must be posted in a conspicuous manner not over six (6) feet above the ground level, and affixed to a sturdy frame where it will be clearly visible and legible to the public.
4. The sign shall be maintained at all times by the applicant until after the public hearing. If a new sign is needed or required, please contact the Plan Review Department at 240-313-2460.
5. An affidavit certifying the property will be posted for the minimum of fourteen (14) days prior to the public hearing date.

Proper posting of the sign will be spot checked by the Zoning Inspector. IF SIGN IS NOT IN COMPLIANCE, IT MAY RESULT IN RESCHEDULING OF THE HEARING.



Project Name: Mark Myers Lot 1

Owner/Applicant: Mark Myers, 14806 National Pike, Clear Spring, MD 21722.

Project Address: 14708 National Pike, Clear Spring, MD 21722

Tax Map 35 Grid 16 Parcel 79

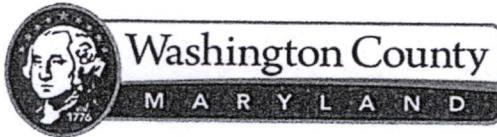
Account # 23000431

Zoning: A(R)

Variance request:

To reduce the Minimum Building Setback Line on the right side yard of proposed lot 1 to 11 feet from the required 15 feet as specified in "Table 5A.5 Residential Lot Size and Bulk Dimensions". Currently there are two principal dwellings on the 4.43 acre property. It is the applicants desire to separate the dwellings allowing each to have its own lot and road frontage. By subdividing the property an existing zoning infraction of having two dwellings on one zoning lot is eliminated, each dwelling/lot can then be sold individually which promotes homeownership.

The odd shape of the property, only 140' of frontage created the need to have one dwelling in the front and one dwelling further back the property versus what maybe viewed a more conventional side by side configuration. In order to properly subdivide and provide fee simple road frontage to each lot an 11 foot panhandle is proposed to serve the remaining dwelling which reduced the existing right side yard of 22 feet to the requested 11 feet.



BOARD OF ZONING APPEALS

OWNER REPRESENTATIVE AFFIDAVIT

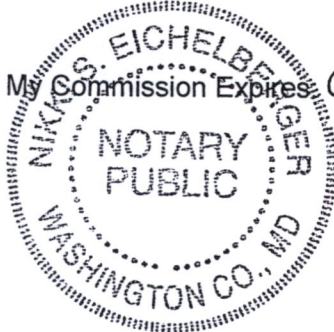
This is to certify that ED SCHREIBER is authorized to file an appeal with the Washington County Board of Appeals for RIGHT SIDE YARD VARIANCE on property located 14708 NATIONAL PIKE, CLEAR SPRING MD 21722. The said work is authorized by MARK MYERS the property owner in fee.

PROPERTY OWNER

MARK D. MYERS
Name
14806 NATIONAL PIKE
Address
CLEAR SPRING MD 21722
City, State, Zip Code
Mark D Myers
Owner's Signature

Sworn and subscribed before me this 2 day of April, 2024.

Nikki S. Eichelberger
Notary Public



AUTHORIZED REPRESENTATIVE

ED SCHREIBER
Name FSA
128 S. PATOMAC ST
Address
HAGERSTOWN, MD 21740
City, State, Zip Code
Ed Schreiber
Authorized Representative's Signature

Sworn and subscribed before me this 2 day of April, 2024.

Nikki S. Eichelberger
Notary Public



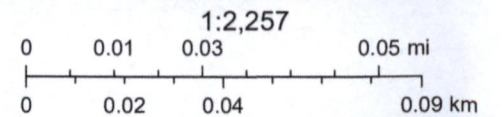
Frederick Seibert & Associates, Inc.



4/1/2024, 3:15:18 PM

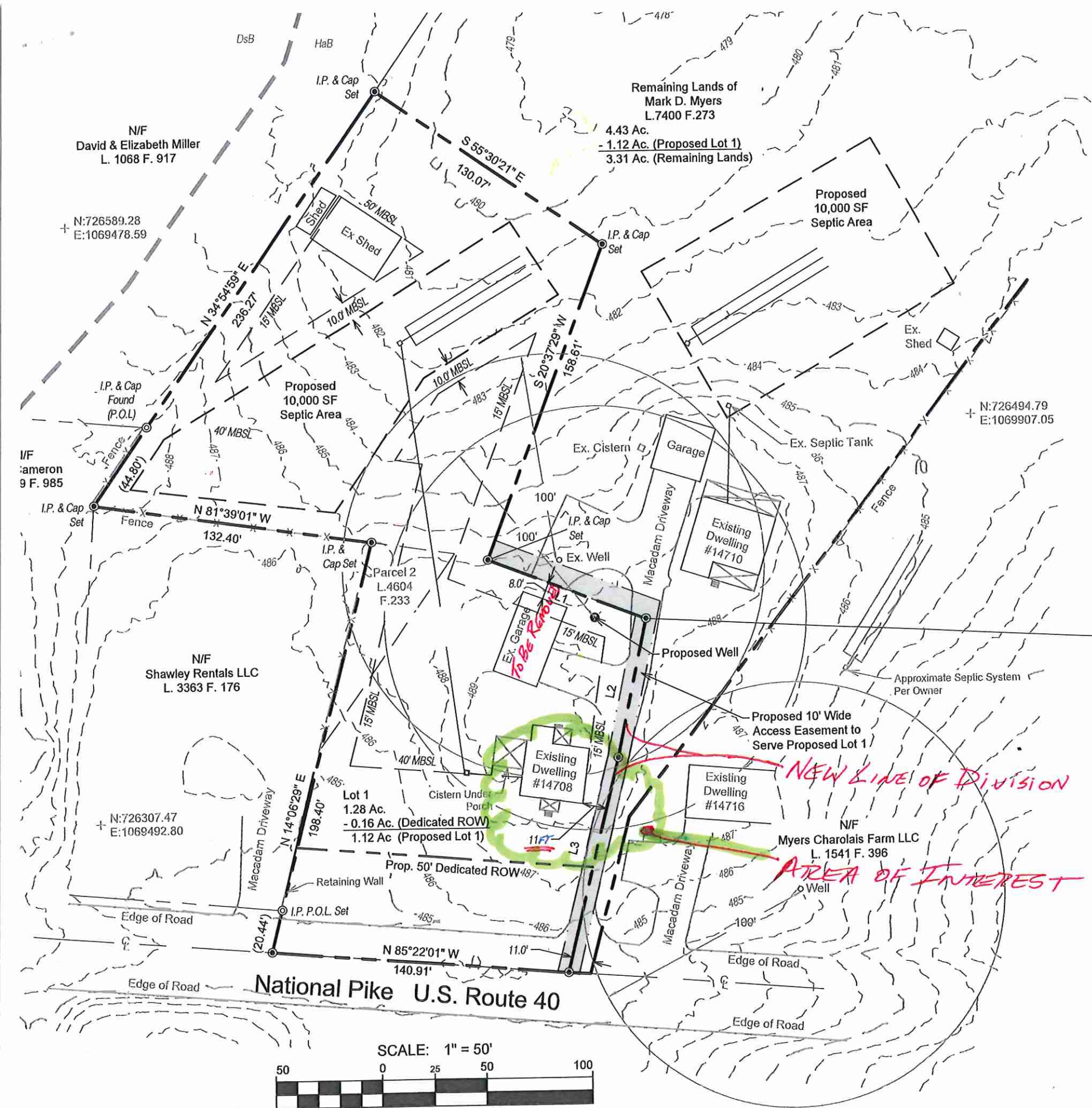
World Transportation
MD_SixInchImagery

Parcels Washington County



Esri Community Maps Contributors, WashCo MD, West Virginia GIS, ©
OpenStreetMap, Microsoft, Esri, TomTom, Garmin, SafeGraph,

Web AppBuilder for ArcGIS



Moats, Personal Representative of the Estate of Mary Virginia Hill, to Mark D. Myers, by deed dated February 11, 2024, and recorded in the Land Records of Washington County, Maryland in Liber No. 7400, folio 273; and that stones marked □ and/or bars marked ○ have been placed as indicated. I hereby certify that these documents were prepared by me or under my responsible charge, and that I am a duly licensed Professional Land Surveyor under the Laws of the State of Maryland, License No. LS-10731 Expiration Date 1/16/2026.

Date _____ Professional Land Surveyor _____

- General Notes**
- 10,000 square feet is hereby reserved for sewage disposal. No permanent physical objects are permitted in this area.
 - There is a 10 ft. wide drainage and utilities easement along all front lot lines and an 8 ft. wide drainage and utilities easement along all side and rear lot lines hereby reserved unless otherwise shown hereon.
 - Bearings, distances and coordinates are based on MD Grid NAD83.
 - Soil types are as shown hereon.
 - Minimum Building Setbacks: front yard- 40'; side yard- 15'; rear yard- 50'. Minimum Building Setback Lines are based on the current Washington County Zoning Ordinance. Accessory structures may be constructed in accordance with Section 4.10 and Section 23.5 (b). Accessory Structures are not permitted without the placement of the principal permitted structure. Zoned A(R).
 - Total upstream watershed affecting this subdivision: is less than 400 Acres.
 - This parcel does not lie in the 100 year flood plain per FEMA Flood Insurance Rate Map, Community Panel No. 24013C0111D dated August 15, 2017, Flood Zone X.
 - Contours based on Washington County Aerial Topography and boundary is based on a field survey performed by FSA, Inc on 01-23-2024 under the supervision of Frederick M. Frederick.
 - There are no floodplains, streams, steep slopes, and other related buffers, or habitat of threatened or endangered species as required to be shown by Sections 306, 307 and 314 of the Washington County Subdivision Ordinance and Section 4.21 (C&D) of the Washington County Zoning Ordinance. This subdivision is not within 1000' of the Appalachian Trail.
 - This subdivision is not within the Edgemont Reservoir Watershed, Smithsburg Reservoir Watershed, however is within the Conococheague Watershed #02142504.
 - No other wells or septic systems lie within 100 feet of the Lot Lines except as shown hereon.
 - All grading on each lot, done either before or after the construction of a dwelling or their appurtenances, shall be the full responsibility of the lot owner.
 - No permanent structures (fences, sheds, play equipment, retaining walls, etc.) shall be permitted within any storm drainage easement, either shown or described, on the Final Plat of Subdivision.
 - This plat has been reviewed and approved per the A(R) Zoning District. Any development/construction shall be in accordance with the Washington County Zoning Ordinance currently being enforced.
 - This plat was prepared without the benefit of a title report and therefore may not indicate all encumbrances on this property.
 - Any development must comply with the Washington County Stormwater Management, Grading, Soil Erosion and Sediment Control Ordinance.
 - The proposed well location shown hereon is for general purposes only and are not to be construed as the only approved location for a proposed well. The proposed well location must be at least 100 feet away from any septic area or reserve septic area on any lot, at least 10 feet away from any property line, 30 feet away from the house foundation, and 15 feet away from any road or right-of-way. Furthermore, the proposed well should also be a minimum of 100 feet away from any stormwater management facility or dry well (if required) as part of the building permit for the proposed house.
 - An additional right of way 50 feet in width as measured from the centerline of National Pike is hereby dedicated for the purpose of future road widening.

**Certificate of Approval
FINAL APPROVAL GRANTED**

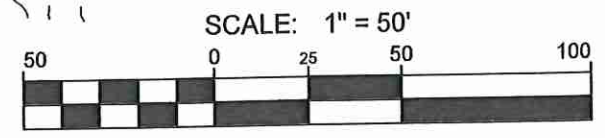
Date: _____

By: _____
Washington County Planning Commission
Final Approval good for one hundred eighty (180) days from above date

PLAT NO _____
DATE _____
WASHINGTON COUNTY

Soil Table		
Soil	Area (Ac.)	%
HaB	1.28	100

LINE	BEARING	DISTANCE
L1	S 68°50'26" E	79.80'
L2	S 11°48'47" W	66.86'
L3	S 13°33'48" W	103.29'



PRELIMINARY / FINAL SUBDIVISION PLAT
OF LOT 1 OF THE LANDS OF MARK D. MYERS

PROJECT NO. _____
DRAWN BY: MTJ
PROJECT DATE: _____
EMAIL: FF
PROPERTY: 35-16-79
SCALE: _____
SHEET TITLE: _____
SL
SH

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

MARK MYERS

Appellant

*

*

Appeal No.: AP2024-012

*

*

* * * * *

OPINION

Mark Myers (hereinafter “Appellant”) requests a variance to reduce the required side yard setback from 15 feet to 11 feet for the existing single-family dwelling for future subdivision at the subject property. The subject property is located at 14708 National Pike, Clear Spring, Maryland and is zoned Agricultural, Rural. The Board held a public hearing in this matter on April 24, 2024.

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 is the owner of the subject property located at 14708 National Pike, Clear Spring, Maryland. The subject property is zoned Agricultural, Rural.
2. The subject property consists of 4.43 acres with two existing dwellings which Appellant did not create. One of the dwellings was constructed in the 1940s and the other was constructed in the 1980s.
3. The subject property only has approximately 140 feet of road frontage.
4. Appellant proposes to subdivide 1.12 acres, creating two (2) parcels each with a dwelling. Appellant also proposes that both lots have road frontage via a shared

entrance that will split into two (2) separate driveways.

5. The Planning Commission has agreed to reduce the panhandle for the remaining lot to eleven (11) feet.

6. There was no opposition presented to for this appeal.

Rationale

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56.¹ “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 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).

Pursuant to Section 5A.5 of the Zoning Ordinance, the required side yard setback for a single-family dwelling is 15 feet. Appellant testified at the hearing that he recently purchased the subject property which abuts his existing property. Without subdivision, the subject property contains two dwellings and approximately 140 feet of road frontage.

¹ “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).

Appellant's proposal is to subdivide into two (2) lots, each with a dwelling, which will render them more marketable for sale or lease. The proposed line of subdivision is drawn so that a narrow, yet acceptable panhandle access exists for the rear dwelling, but the new line runs very close to the other dwelling.

Appellant argues that the prospect of having two dwellings on a single property creates practical difficulty which can easily be addressed by a slight reduction in the side yard setback. The Board is persuaded that the most reasonable way to address this issue is a slight relaxation of the setback requirement. The resulting subdivision into two (2) improved lots is also consistent with the spirit and purpose of the Ordinance. Thus, the Board finds that Appellant has satisfied the criteria for a variance and the requested relief should be granted.

Accordingly, the requested variance to reduce the required side yard setback from 15 feet to 11 feet for the existing single-family dwelling for future subdivision at the subject property is GRANTED, by a vote of 5-0. Said variance request is granted upon the condition that the proposed use be consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Jay Miller, Chair

Date Issued: May 23, 2024

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.



WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P:240.313.2430 | F:240.313.2431 | Hearing Impaired: 7-1-1

ZONING APPEAL

Property Owner: DK Valley Plaza LLC
1777 Reisterstown Road
Suite 165
Baltimore MD 21208
Appellant: Seven Brew Coffee
3108 Vestal Parkway East
Vestal NY 13850
Property Location: 1701 MASSEY Boulev
Hagerstown, MD 21740
Description Of Appeal: Variance from the previously reduced number of parking spaces of 667 down to 610 for proposed drive-thru coffee shop.

Docket No: AP2024-013
Tax ID No: 26025796
Zoning: BG
RB Overlay: No
Zoning Overlay:
Filed Date: 04/04/2024
Hearing Date: 04/24/2024

Appellant's Legal Interest In Above Property:
Owner: No
Contract to Rent/Lease: Yes
Lessee: No
Contract to Purchase: No
Other:

Previous Petition/Appeal Docket No(s): AP93-038, AP93-047, AP-212, AP-222, AP2008-066, AP2020-021, AP2021-004, AP2024-013

Applicable Ordinance Sections: Washington County Zoning Section 22.12 (b) 1

Reason For Hardship:

If Appeal of Ruling, Date Of Ruling:

Ruling Official/Agency:

Existing Use: Shopping Center Proposed Use: Drive-Thru Coffee Shop

Previous Use Ceased For At Least 6 Months: Date Ceased:

Area Devoted To Non-Conforming Use - Existing: Proposed:

I hereby affirm that all of the statements and information contained in or filed with this appeal are true and correct.

[Signature]
Appellant Signature

State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 4 day of April, 2024.

[Signature]
Notary Public
Kathryn B Rathvon
NOTARY PUBLIC
WASHINGTON COUNTY
MARYLAND
MY COMMISSION EXPIRES NOVEMBER 07, 2025



WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P:240.313.2430 | F:240.313.2431 | Hearing Impaired: 7-1-1

AFFIDAVIT IN COMPLIANCE WITH SECTION 25.51(C)


Docket No: AP2024-013

State of Maryland Washington County, To Wit:

On 4/4/2024, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared DK Valley Plaza LLC and made oath in due form of law as follows:

DK Valley Plaza LLC will post the zoning notice sign(s) given to me by the Zoning Administrator in accordance with Section 25.51(c) of the Washington County Zoning Ordinance for the above captioned Board of Appeals case, scheduled for public hearing on 04/24/2024, and that said sign(s) will be erected on the subject property in accordance with the required distances and positioning as set out in the attached posting instructions.

Sign(s) will be posted on 04/09/2024 and will remain until after the above hearing date.



DK Valley Plaza LLC

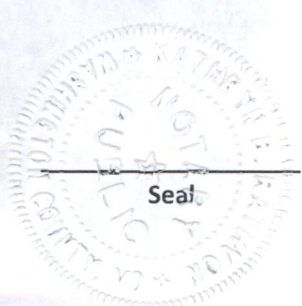
Sworn and subscribed before me the day and year first above written.



Notary Public

Kathryn B Rathvon
NOTARY PUBLIC
WASHINGTON COUNTY
MARYLAND
MY COMMISSION EXPIRES NOVEMBER 07, 2025

My Commission Expires





WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P: 240.313.2430 | F: 240.313.2431 | Hearing Impaired: 7-1-1

BOARD OF ZONING APPEALS

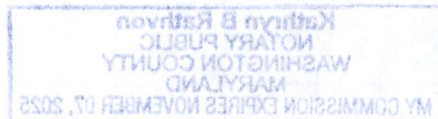
ATTENTION!

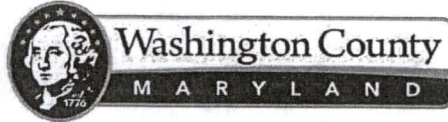
Posting Instructions

The premises MUST be posted in accordance with the following rules:

1. The sign must be posted a minimum of fourteen (14) days prior to the public hearing. Section 25.51(c) Property upon which the application or appeal is concerned shall be posted conspicuously by a zoning notice no less in size than twenty-two (22) inches by twenty-eight (28) inches at least fourteen (14) days before the date of the hearing.
2. The sign must be placed on the property within ten (10) feet of the property line which abuts the most traveled public road.
3. The sign must be posted in a conspicuous manner not over six (6) feet above the ground level, and affixed to a sturdy frame where it will be clearly visible and legible to the public.
4. The sign shall be maintained at all times by the applicant until after the public hearing. If a new sign is needed or required, please contact the Plan Review Department at 240-313-2460.
5. An affidavit certifying the property will be posted for the minimum of fourteen (14) days prior to the public hearing date.

Proper posting of the sign will be spot checked by the Zoning Inspector. IF SIGN IS NOT IN COMPLIANCE, IT MAY RESULT IN RESCHEDULING OF THE HEARING.





BOARD OF ZONING APPEALS

80 West Baltimore Street | Hagerstown, MD 21740 | P: 240.313.2460 | F: 240.313.2461 | Hearing Impaired: 7-1-1
WWW.WASHCO-MD.NET

Appeal for Variance

Appeal is hereby made for a variance from a requirement of the Washington County Zoning Ordinance as follows:

Location 1701 Massey Boulevard, Haegerstown, MD 21740

Appellant's present legal interest in above property: (Check One)

Owner (Including Joint Ownership) Lessee Contract to rent/lease
 Contract to Purchase Other

Specify the Ordinance section and subsection from which the variance is desired:

Zoning Ordinance 22.12

Specify the particular requirement(s) from which a variance is desired in that section or subsection:

22.12.B.1: Customer/Visitor Parking - Minimum Spaces Required. Parking for employees, customers, and/or visitors shall be provided

in accordance with the following table.

Describe the nature and extent of the desired variance from Ordinance requirements: listed above:

A variance is requested for the minimum number of parking spaces allowed for the identified parcel.

Describe reason(s) why the Ordinance requirement(s) in question would result in peculiar and/or unusual practical difficulties to or would impose exceptional or undue hardship upon the owner of the property if the requested variance were not granted:

Provide Detailed Explanation on Separate Sheet

Has any previous petition or appeal involving this property been made to the Board?

Yes No

If yes, list docket number(s): AP2021-004, AP2020-021, AP222, AP212, AP93-047, AP93-038

I hereby certify that I have, to the best of my knowledge, accurately supplied the information required for the above referenced appeal.

[Signature]
Signature of Appellant

1777 REISTERSTOWN RD, Suite 165 BALT, MD
Address and of Appellant

SGARLAND@KLEINENTERPRISES.COM
Email of Appellant

410-902-0290
Phone Number of Appellant

21268

This appeal form is to be used to assist the customer in gathering the information necessary to submit an application. However, the application shall be processed in person.



1550 East Republic Road
Springfield, MO 65804
tothassociates.com
417.888.0645

Board of Zoning Appeals
80 West Baltimore Street
Hagerstown, MD 21740

Re: 7 Brew - Variance Request

Dear Board of Zoning Appeals,

The Valley Plaza Shopping Center located at 1701, 1705, 1709, & 1713 Massey Boulevard, Hagerstown, MD 21740 contains a retail shopping building and associated parking. Seven Brew (proposed development) at 1701 Massey is requesting a variance for a reduction in parking space requirements per Zoning Ordinance Section 22.12.b.1. Justifications for the variances are provided below. Please see the attached 'Parking Exhibit', showing existing and proposed parking spaces for your reference.

In March 2021, the Valley Plaza Shopping Center was granted a variance to reduce the number of parking spaces from 889 to 667. Seven Brew would like to request a variance to further reduce the available parking spaces in the Valley Plaza Shopping Center from 667 down to 610.

Seven Brew is a drive-through business, no dine-in or sit-down option is available. They only serve drinks; no food service is provided. Seven Brew has a very small footprint, consisting of a 540 square foot prefabricated building and a total developed site area of less than 0.5 acres. Seven Brew operates two drive-thru lanes, allowing them to move customers through the business quickly and safely. The proposed Seven Brew development will provide the code required parking stall per Section 22.12.b.1 (6 employee stalls).

The addition of the proposed Seven Brew development is anticipated to have no negative impact to the overall parking within the Valley Plaza Shopping Center. The different uses (retail and dining) allow for different peak traffic times which result in adequate available parking for both uses. Historically, there have been more available parking stalls at the shopping center than needed during peak business hours. As trends in shopping have changed in recent years from brick-and-mortar stores to online shopping, the need for larger parking lots has significantly reduced. Therefore, it is requested that the required number of parking stalls for the shopping center be allowed to be reduced below the code minimum to allow for the development of the proposed Seven Brew.

If you have any questions, please contact me at 417-888-0645.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shawn Barry', with a long horizontal flourish extending to the right.

Shawn Barry, PE
Vice President.



Practical Difficulty

1. Strict compliance would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome; and

Shopping patterns have changed substantially over the years with the rise of on-line shopping and at home delivery, thus causing traditional brick and mortar stores to see less traffic than in the past and creating parking lots at existing retail shopping centers that have available parking exceeding peak traffic needs. The existing retail uses located on the subject property have different peak traffic times throughout the day from the proposed 7 Brew Coffee Shop. Not allowing the requested reduction in parking would be an unnecessary burden on the property given the overabundance of existing parking spaces, and the fact that the proposed use would not share the same peak hour traffic generation.

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

Not allowing the applicant to reduce the parking requirements for the proposed 7 Brew would be an injustice to the applicant and would simply keep an underutilized asphalt parking field in place that would serve no benefit to the existing tenants of the Center.

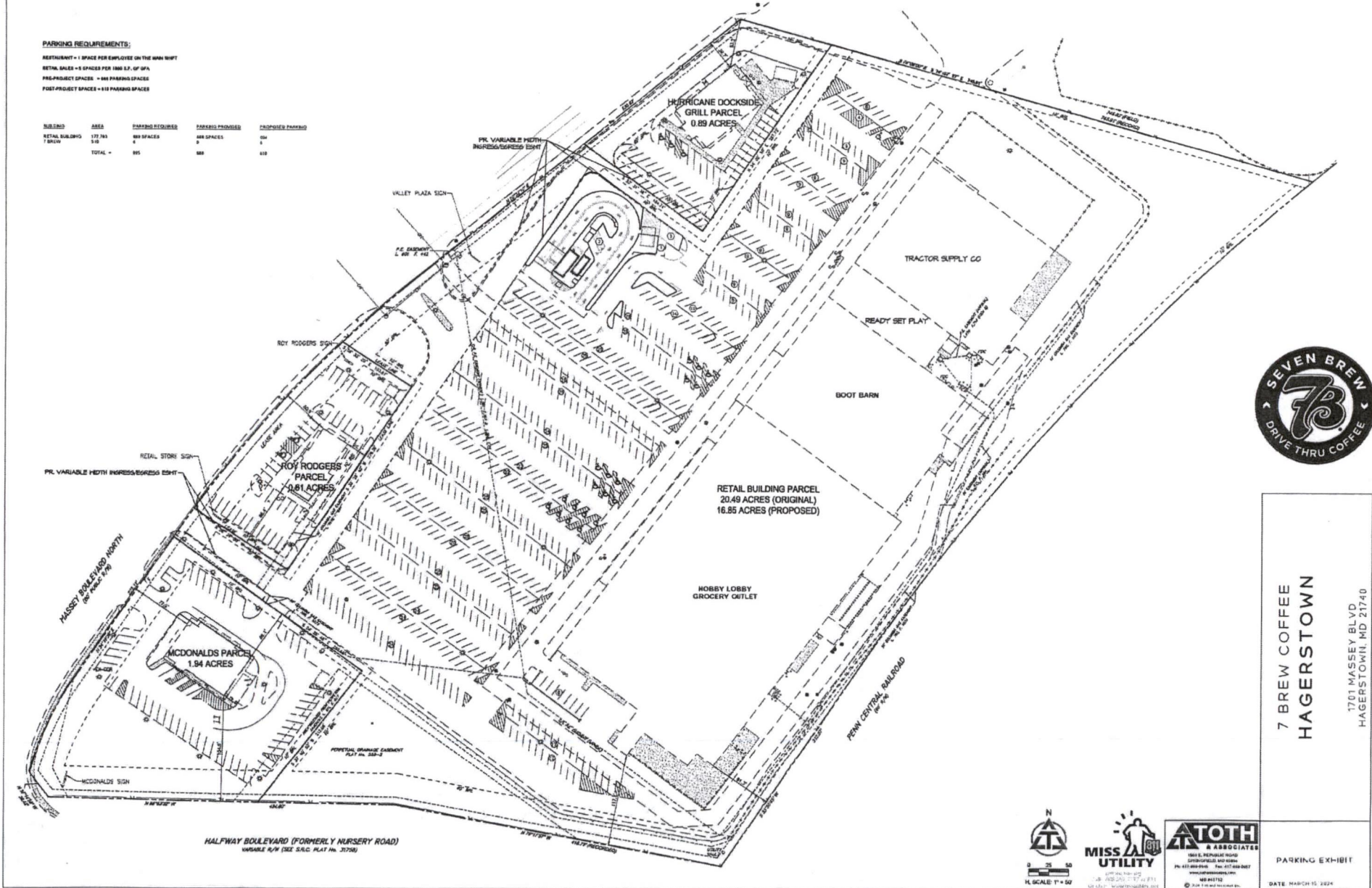
3. Granting the variance would observe the spirit of the Ordinance and secure public safety and welfare.

Granting the variance would observe the spirit of the Ordinance, as sufficient parking would still be available to meet the demands of all the Tenants of the Center. The addition of the 7 Brew project would break up a large expanse of parking, adding additional pervious areas and landscaping. Locating the proposal in this location also uses existing infrastructure that is already in place and reduces any sort of greenfield expansion of infrastructure.

PARKING REQUIREMENTS:

RESTAURANT = 1 SPACE PER EMPLOYEE ON THE MAIN FLOOR
 RETAIL BUILDING = 1 SPACE FOR 100 SQ. FT. OF S.F.
 PRE-PROJECT SPACES = 100 PARKING SPACES
 POST-PROJECT SPACES = 110 PARKING SPACES

SUBJECT	AREA	PARKING REQUIREMENTS	PARKING PROVIDED	PROPOSED PARKING
RETAIL BUILDING	172,761	100 SPACES	100	110
TOTAL	-	100	100	110



**7 BREW COFFEE
 HAGERSTOWN**
 1701 MASSEY BLVD
 HAGERSTOWN, MD 21740

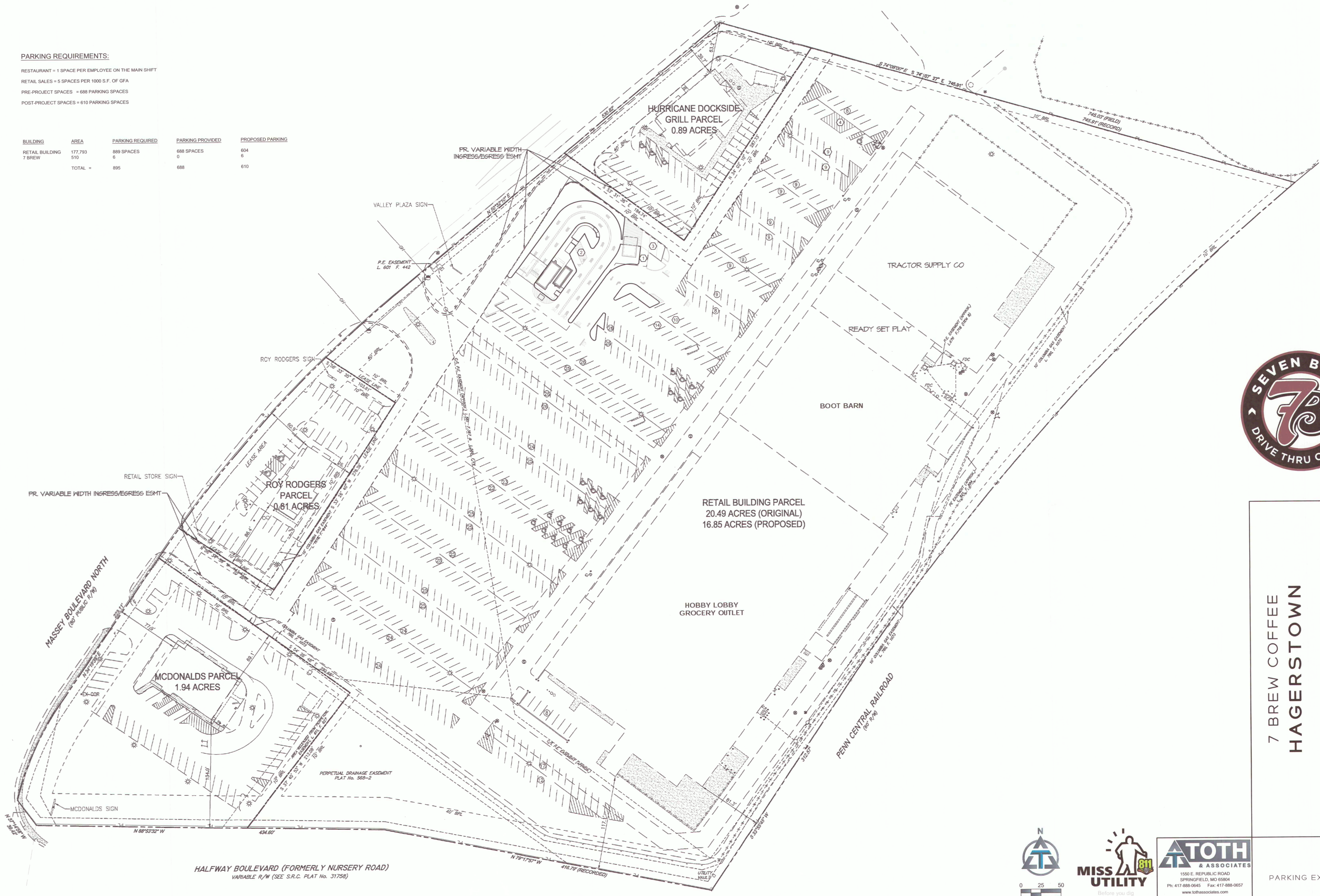


PARKING EXHIBIT
 DATE: MARCH 15, 2024

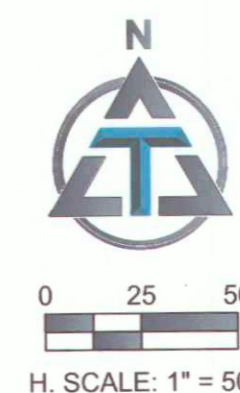
PARKING REQUIREMENTS:

RESTAURANT = 1 SPACE PER EMPLOYEE ON THE MAIN SHIFT
 RETAIL SALES = 5 SPACES PER 1000 S.F. OF GFA
 PRE-PROJECT SPACES = 688 PARKING SPACES
 POST-PROJECT SPACES = 610 PARKING SPACES

BUILDING	AREA	PARKING REQUIRED	PARKING PROVIDED	PROPOSED PARKING
RETAIL BUILDING	177,793	889 SPACES	688 SPACES	604
7 BREW	510	6	0	6
TOTAL =		895	688	610



7 BREW COFFEE
HAGERSTOWN
 1701 MASSEY BLVD
 HAGERSTOWN, MD 21740



PARKING EXHIBIT
 DATE: MARCH 15, 2024

Adjacent Property Owners Information

Owners Name	Mailing Address	City	State	Zip	Tax Map	Grid	Parcel	Lot
DK Valley Plaza LLC	1777 Reistertown Rd, Suite 165	Baltimore	MD	21208	49	7	631	
Aschenbach Hagerstown LLC, C/O Hagerstown Ford	1714 Massey Blvd	Hagerstown	MD	21740	48	12	752	1
UNG Enterprises LLC	13725 Creekside Dr	Silver Spring	MD	20804	49	7	655	
Massey Boulevard LLC, C/O Jerry E Massey	17026 Virginia Ave	Willimasport	MD	21795	48	12	821	
2013 Massey Boulevard LLC	PO Box 4217	Hagerstown	MD	21741	48	12	133	
Heister Street Association Inc	1681 Wesel Blvd	Hagerstown	MD	21740	49	7	603	4C
AC & T Co Inc	PO Box 4217	Hagerstown	MD	21741	49	7	979	
Subconscious LLC	11321 Massey Blvd	Hagerstown	MD	21740	49	13	624	
M & W Ventures LLC, C/O Kevin Miller	17500 York Dr	Hagerstown	MD	21740	49	13	1052	
FCPT Holdings LLC	591 Redwood Highway Ste 1150	Mill Valley	CA	94941	48	18	960	1
Sams Real Estate Business Trust Club #8193, C/O Walmart Stores Inc	PO Box 8050 MS 0555	Bentonville	AR	72712	49	7	603	1A

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

SEVEN BREW COFFEE
Appellant

*

*

Appeal No.: AP2024-013

*

*

* * * * *

OPINION

Seven Brew Coffee (hereinafter “Appellant”) requests a variance to reduce the required number of parking spaces from 667 to 610 for a proposed drive-thru coffee shop at the subject property. The subject property is located at 1701 Massey Boulevard, Hagerstown, Maryland and is zoned Business, General. The Board held a public hearing in this matter on April 24, 2024.

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 is the contract lessee of the subject property located at 1701 Massey Boulevard, Hagerstown, Maryland. The subject property is zoned Business, General. Appellant brings this appeal with written consent and authority from the owner of the subject property.

2. The subject property has a large retail row containing a Tractor Supply store, Ready, Set, Play location, Boot Barn, Hobby Lobby and a grocery store. The subject property also contains separate pads with a McDonalds, Roy Rogers, and Mexicali Cantina restaurants.

3. Roy Rogers does not have direct access to Massey Boulevard but uses and access point next to McDonalds and access at the intersection with Railway Lane.

4. Mexicali Cantina does not have direct access to Massey Boulevard but uses the intersection with Railway Lane and access from the intersection with Heister Street.

5. Appellant's proposed coffee shop will have two (2) drive-thru lanes, will be open from 5:30 a.m. to 10:00 p.m. and will not serve food. The building is a modular unit that is brought in by crane and can be removed upon the termination of the lease.

6. Appellant expects to have approximately eight (8) employees working a shift at a given time, running three (3) shifts per day with overlap. There will be a need for up to eight (8) employee parking spaces.

7. The Board previously approved a variance to reduce the required parking spaces from 889 to 667 in Case No. AP2021-004.

8. There was no opposition presented for this appeal.

Rationale

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56.¹ "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 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).

¹ "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).)

As the Board did in the previous case involving the subject property, we start with the premise that the original number of parking spaces did not meet the Zoning Ordinance requirements. Despite this, the number of parking spaces for exceeded the practical need for the businesses in the shopping center. The required number of parking spaces was reduced from 889 to 667 by the Board on March 16, 2021.² In that case, the Board acknowledged that the “parking lot at the subject property is significantly underutilized and has never been full, even when all of the retail uses were operating.” Even three years later, the parking lot remains mostly empty even when the retail businesses are operating.

The location of Appellant’s proposed coffee shop requires the elimination of parking spaces which will not materially affect the operation of the shopping center. Appellant’s peak hours also offset the general business hours of the retail businesses and restaurants in the shopping center, so there is unlikely to be a simultaneous need for parking. The Board finds that the request is the minimum necessary to achieve Appellant’s proposed plan to locate a drive-thru coffee shop at the subject property. Given that the parking already did not comply with the Ordinance requirements, it would be unreasonable and result in a practical difficulty to impose such strict requirements on the reasonable use of the property. The Board finds that the parking

² The Board also considered a request to modify the subdivision requirements.

variance is consistent with the spirit and intent of the Zoning Ordinance and should be granted.

Accordingly, the requested variance to reduce the required number of parking spaces from 667 to 610 for a proposed drive-thru coffee shop at the subject property is GRANTED, by a vote of 5-0. Said variance request is granted upon the condition that the proposed use be consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Jay Miller, Chair

Date Issued: May 23, 2024

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.



WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P:240.313.2430 | F:240.313.2431 | Hearing Impaired: 7-1-1



ZONING APPEAL

Property Owner: New Heights Industrial Park LLC
C/O The Bluestone Group
225 Broadway 32nd Floor
New York NY 10007

Docket No: AP2024-014
Tax ID No: 27038166

Appellant: First Breach Inc
18450 Showalter Road
Bay 1&2
Hagerstown MD 21742

Zoning: IG
RB Overlay: No
Zoning Overlay:

Filed Date: 04/04/2024
Hearing Date: 04/24/2024

Property Location: 18450 Showalter Road, Hanger# 1&2
Hagerstown, MD 21742

Description Of Appeal: Special exception for the expansion of the previously approved explosive manufacturing/storage ammunition primers to now include small arm ammunition manufacturing/storage of smokeless propellant and the accessory use of a testing area for products produced and variance from the required setback/buffer of this use to not be less than 1,000 ft. from any residential district/existing residential use on separate lot and or any residential portion of a mixed use district to 808 ft. from existing residential use on separate lot located at 18531 Showalter Road.

Appellant's Legal Interest In Above Property: Owner: No Contract to Rent/Lease: No
Lessee: Yes Contract to Purchase: No
Other:

Previous Petition/Appeal Docket No(s): AP2022-032

Applicable Ordinance Sections: Washington County Zoning Ordinance Section 14.2(a)

Reason For Hardship: Cost to relocate the business to meet the setback requirement for the special exception use would negatively impact the exiting permitted business on the property.

If Appeal of Ruling, Date Of Ruling:

Ruling Official/Agency:

Existing Use: Ammunition Manufacture Proposed Use: Expansion of Ammunition Manufacture Operations

Previous Use Ceased For At Least 6 Months: Date Ceased:

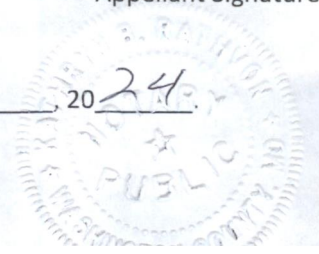
Area Devoted To Non-Conforming Use - Existing: Proposed:

I hereby affirm that all of the statements and information contained in or filed with this appeal are true and correct.

Handwritten signature of the appellant over a horizontal line, with the text 'Appellant Signature' to the right.

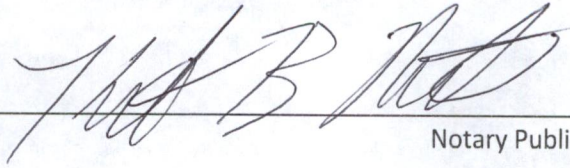
State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 4 day of April, 2024.



Kathryn B Rathvon
NOTARY PUBLIC
WASHINGTON COUNTY
MARYLAND
MY COMMISSION EXPIRES NOVEMBER 07, 2025

My Commission Expires



Notary Public





WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P:240.313.2430 | F:240.313.2431 | Hearing Impaired: 7-1-1

AFFIDAVIT IN COMPLIANCE WITH SECTION 25.51(C)

Docket No: AP2024-014

State of Maryland Washington County, To Wit:

On 4/4/2024, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared First Breach Inc and made oath in due form of law as follows:

First Breach Inc will post the zoning notice sign(s) given to me by the Zoning Administrator in accordance with Section 25.51(c) of the Washington County Zoning Ordinance for the above captioned Board of Appeals case, scheduled for public hearing on 04/24/2024, and that said sign(s) will be erected on the subject property in accordance with the required distances and positioning as set out in the attached posting instructions.

Sign(s) will be posted on 04/09/2024 and will remain until after the above hearing date.

First Breach Inc

Sworn and subscribed before me the day and year first above written.

Kathryn B Rathvon
NOTARY PUBLIC
WASHINGTON COUNTY
MARYLAND
MY COMMISSION EXPIRES NOVEMBER 07, 2025

Notary Public



Seal

My Commission Expires



WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P:240.313.2430 | F:240.313.2431 | Hearing Impaired: 7-1-1

BOARD OF ZONING APPEALS

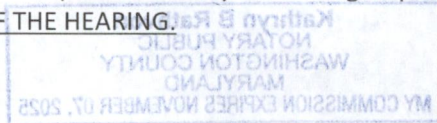
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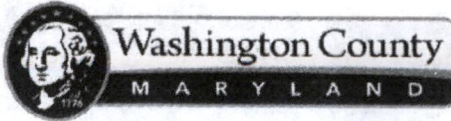
Posting Instructions

The premises **MUST** be posted in accordance with the following rules:

1. The sign must be posted a minimum of fourteen (14) days prior to the public hearing
Section 25.51(c) Property upon which the application or appeal is concerned shall be posted conspicuously by a zoning notice no less in size than twenty-two (22) inches by twenty-eight (28) inches at least fourteen (14) days before the date of the hearing.
2. The sign must be placed on the property within ten (10) feet of the property line which abuts the most traveled public road.
3. The sign must be posted in a conspicuous manner not over six (6) feet above the ground level, and affixed to a sturdy frame where it will be clearly visible and legible to the public.
4. The sign shall be maintained at all times by the applicant until after the public hearing. If a new sign is needed or required, please contact the Plan Review Department at 240-313-2460.
5. An affidavit certifying the property will be posted for the minimum of fourteen (14) days prior to the public hearing date.

Proper posting of the sign will be spot checked by the Zoning Inspector. IF SIGN IS NOT IN COMPLIANCE, IT MAY RESULT IN RESCHEDULING OF THE HEARING.





BOARD OF ZONING APPEALS

OWNER REPRESENTATIVE AFFIDAVIT

This is to certify that Jordan Low is authorized to file an appeal with the Washington County Board of Appeals for Amendment to Special Exception / Variance (Docket No: AP2022-032) located 18450 Showalter Road, Hagerstown, MD 21742 on property. The said work is authorized by the property owner in fee.

PROPERTY OWNER



Jack Peretz
Name
911 East county Line RD
Address
LKWD NJ 08701
City, State, Zip Code
Owner's Signature

Sworn and subscribed before me this 4th day of April, 20 24.

Kimberly B Stehman
Notary Public

My Commission Expires: 06/14/2026

AUTHORIZED REPRESENTATIVE

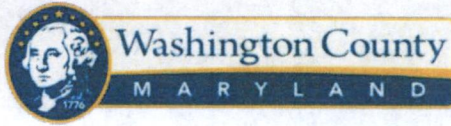


Jordan Low
Name
18450 Showalter Road
Address
Hagerstown, MD 21742
City, State, Zip Code
Jordan Low
Authorized Representative's Signature

Sworn and subscribed before me this 4th day of April, 20 24.

Kimberly B Stehman
Notary Public

My Commission Expires: 06/14/2026



BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742 | P: 240.313.2430 | F: 240.313.2461 | Hearing Impaired: 7-1-1

WWW.WASHCO-MD.NET

Appeal for Special Exception

Appeal is hereby made for a special exception under the Washington County Zoning Ordinance as follows:

Location 18450 Showalter Road, Hagerstown, MD 21742

Appellant's present legal interest in above property: (Check One)

Owner (Including Joint Ownership) Lessee Contract to rent/lease

Contract to Purchase Other _____

Use Proposed: Small Arms Ammunition Manufacture or Smokeless Propellant Storage for Production of Ammunition

And accessory use testing area

Zoning Ordinance section and subsection(s) providing for proposed use: Section 14.2(a)

If filing functionally similar to a principal permitted use or special exception use, please list the use and describe the use similarities:

Provide Detailed Explanation on Separate Sheet

Has any previous petition or appeal involving this property been made to the Board?

Yes No

If yes, give docket number(s): AP2022-032

Additional comments, if any: _____

Amendment to previous granted Special Exception to include small arm ammunition manufacturing or storage of smokeless propellant for ammunition manufacture

Accessory use testing area is necessary for the process use of normal business operations

This area will be underground and not open to the public under any circumstance.

I hereby certify that I have, to the best of my knowledge, accurately supplied the information required for the above referenced appeal.

Signature of Appellant

jordan@firstbreach.com

Email of Appellant

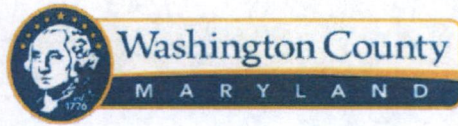
18450 Showalter Road, Hagerstown, MD 21742

Address of Appellant

410-303-1600

Phone Number of Appellant

This appeal form is to be used to assist the customer in gathering the information necessary to submit an application. However, the application shall be processed in person.



BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742 | P: 240.313.2430 | F: 240.313.2461 | Hearing Impaired:

7-1-1 WWW.WASHCO-MD.NET

Appeal for Variance

Appeal is hereby made for a variance from a requirement of the Washington County Zoning Ordinance as follows:

Location 18450 Showalter Rd, Hagerstown, MD 21742

Appellant's present legal interest in above property: (Check One)

Owner (Including Joint Ownership) Lessee Contract to rent/lease

Contract to Purchase Other _____

Specify the Ordinance section and subsection from which the variance is desired:
14.2(a)

Specify the particular requirement(s) from which a variance is desired in that section or subsection:

Special exception uses shall not be less than 1,000 feet from any residential district, from any existing residential use on a separate lot,

or any residential portion of a mixed use district

Describe the nature and extent of the desired variance from Ordinance requirements: listed above:

Request for reduction in set back/buffer from existing residential use on separate lot located 18531 Showalter Rd from 1,000 feet to 808 feet (192 foot reduction)

Describe reason(s) why the Ordinance requirement(s) in question would result in peculiar and/or unusual practical difficulties to or would impose exceptional or undue hardship upon the owner of the property if the requested variance were not granted:

Provide Detailed Explanation on Separate Sheet

Has any previous petition or appeal involving this property been made to the Board?

Yes No

If yes, list docket number(s): AP2022-032

I hereby certify that I have, to the best of my knowledge, accurately supplied the information required for the above referenced appeal.

Jordan Low
Signature of Appellant

First Breach, Inc.
18450 Showalter Rd
Hagerstown, MD 21742
Address and of Appellant

Jordan@firstbreach.com

410-303-1600

Email of Appellant

Phone Number of Appellant

This appeal form is to be used to assist the customer in gathering the information necessary to submit an application. However, the application shall be processed in person.



First Breach, Inc.

Info@FirstBreach.com

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Date: 04/01/2024

Washington County Board of Appeals
80 West Baltimore Street
Hagerstown, Maryland 21740

Re: 18450 Showalter Road, Bays 1 & 2, Hagerstown, Maryland 21742
Request for Amendment to Special Exception

Dear Board Members,

New Heights Industrial Park, LLC (the "Landlord"), is the owner of +/- 41.9 acres of real property located at Map 0024, Parcel 1201 with an address of 18450 Showalter Road, Hagerstown, Maryland 21742 (the "Property"), the Property is zoned "IG" (Industrial General) with the Airport Overlay "AP/O".

The Property is the New Heights Industrial Park, a 900,000 sf industrial park, formerly housing the Fairchild Aircraft Manufacturing Company. New Heights Industrial Park boasts 50-foot ceilings, dock high doors and other amenities commensurate with industrial and manufacturing uses. Ingress and egress to the Property is by way of Showalter Road, which serves as the Property's southern boundary for a distance of 1,500 feet. Hagerstown Regional Airport bounds the Property on the North and West sides, while the Property's Eastern boundary parallels Basore Drive.

The Landlord leases portion of the Property to various commercial and industrial use tenants. Additionally, the Northern-most portion of the building on the Property is home to the Hagerstown Aviation Museum. Among the Landlord's tenants is First Breach, Inc. (the "Applicant").

Special Exception

The Applicant requests an amendment to its current granted Special Exception, to use a portion of their leased premises, which currently manufactures the non-explosive components of ammunition, for ammunition assembly and smokeless powder storage as well as an accessory use testing area in the underground portion of Applicant's leased space that will not be open to the public. Unlike black powder, smokeless powder burns, rather than explodes when ignited. Per the Alcohol, Tobacco, and Firearms agency (ATF), smokeless powder is



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excluded from explosive storage regulations. The accessory use testing area is for a process use necessary for the business operations of the Applicant.

First Breach's manufacture and assembly of the non-explosive ammunition components is a principally permitted use in the IG District. First Breach's business has been successful, and as a result of that success, First Breach desires to expand their business to include ammunition assembly and smokeless powder storage, for use in ammunition assembly, to its current production operations. The accessory use testing area will be used to test assembled ammunition and necessary to normal business operations. Product will be tested using a Wisemann universal receiver, a mounted and stationary barrel that will not move nor require trigger pull operation, unlike a standard firearm. The testing area will not be open to the public under any circumstance. First Breach anticipates further success from ammunition assembly as well as significant job growth for First Breach and as a result of ammunition assembly for the Washington County area.

As set forth in Article 14 of the Washington County Zoning Ordinance (the "Zoning Ordinance"), "Explosive manufacture or storage" is a permissible special exception use in the Industrial, General District, requiring approval by the board of Zoning Appeals. A condition of the Board's grant of a special exception is that it shall not be inconsistent with the purpose set forth for the district.

The purpose of the Industrial, General District "is to provide locations for manufacturing, processing, and other heavy industrial uses which may require extensive transportation, water and/or sewerage facilities, or open space, because of the number of employees, the type of manufacturing operation, and or any by-products which might result from the use. Zoning Ordinance, Section 14.0. The AP/O "Airport Overlay Zone" "...is intended to reduce the limiting effects on Airport operations and improvements that incompatible residential development can create." First Breach's contemplated special exception use shall be located in a secure room within the leased premises. Given the secure nature of the indoor manufacture space there will be no adverse effects on the airport operations.

The Zoning Ordinance defines "Explosives" as "any chemical compound, mixture, or devise, the primary or common purpose of which is to function by explosion." "Smokeless powder is a type of powder used in firearms and artillery that produces less smoke and less fouling when fired compared to black powder." Smokeless powders are exempt from regulation under 18 U.S.C. Chapter 40 and the regulations in 27 CFR Part 555.

To the South of the Property, all the adjoining land is zoned Highway Interchange "HI". The Hagerstown Regional Airport is zoned Airport District "AP". East of the Property are parcels zoned Business Local "BL", Residential Transition "RT" and additional "HI" parcels.



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The Property is served by public water and sewer facilities. First Breach's proposed use fits within all required setbacks and will not exceed the 100-foot height restriction. All current and existing refuse storage and collection, landscaping, lighting, signs and loadings areas presently used by First Breach in the conduct of its existing manufacturing business will be used in conjunction with its manufacture of primers. First Breach operates Monday-Friday with two shifts (7:00am-3:00pm and 3:00pm-11:00pm) for its approximately 30 employees. Should the Board approve Applicant's special exemption request, the Applicant would create an additional 25 jobs distributed between the two shifts.

Approving this application permits First Breach to expand its current manufacturing operation, taking further advantage of the Property's proximity to major transportation routes in Washington County, including Route 11 and Interstate 81. While some additional traffic is a natural byproduct of adding jobs and employees to the business, those trips will occur at the beginning and end of the shifts, and First Breach does not anticipate a significant increase in truck trips to and from the Property, thus even though extensive transportation and heavy traffic is anticipated by the IG District, any increase in traffic resulting from First Breach's expansion will not be unreasonable. Similarly, a substantial increase in water/sewer usage, or the need of open space, beyond which First Breach currently utilizes is not anticipated.

Section 14.2 of the Zoning ordinance proscribes the location of the enumerated special exception uses in the IG District within 1,000 of any Residential District, any existing residential use on a separate lot, or any residential portion of a mixed-use development. The RT District is greater than 1,000 feet from where First Breach proposes to manufacture the primers.

Lastly, *Schultz v. Pritts*, 291 Md. 1 (1981), requires the Board to determine, as part of its special exception analysis, "whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would not have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." *Id.* At 22-33.

The location of the Property and the leased premises occupied by First Breach minimizes any adverse effects imputable to the assembly of ammunition and storage of smokeless powder, as well as the proposed accessory use testing area. The Property is surrounded by commercial districts (BL and HI) supporting commercial uses. Fronting on Showalter, the Property is located within an expansive commercial, industrial and transportation area. The Hagerstown Regional Airport is one of the main economic drivers of the County and First Breach's contemplated expansion of its operations does not interfere or conflict with airport operations. First Breach is one of many tenants of the New Heights Industrial Park, all of whom are properly suited to occupy space in the IG District. First Breach's expansion into ammunition assembly and smokeless powder storage will occur within a secure room within the facility and smokeless powder will be stored per NFPA 495 guidelines, within the leased premises. Any



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concerns about noise, vibration, fumes, odors, or other adverse effects are ameliorated by First Breach's location of the ammunition assembly, smokeless powder storage, and accessory use testing area, and overall layout of the Property. To the extent any adverse effects arise from First Breach's current use of the Property, those associated with the addition of primer manufacture to its operations will not cause any effects above and beyond those inherently associated with such special exception use.

VARIANCE REQUEST

While the RT District in the vicinity of the Property is beyond 1,000 feet of the ammunition assembly and smokeless powder storage contemplated by First Breach, a house turned residential apartments located at 18531 Showalter Road on a parcel zoned HI (Map: 0024, Parcel:1059) is approximately 808 feet from the intended location of the requested special exception use. Apartments are not principally permitted use in the HI District; thus, Applicant presumes they exist as a valid non-conforming use or by virtue of approval from the Board or Washington County Planning and Zoning.

This non-conforming use is adjacent to the Colonial Bar and Grill at 14130 Pennsylvania Avenue (Map: 0024, Parcel: 0406) and Vista Business Park (Map: 0024, Parcel: 0470). Both adjoining parcels are zoned "HI".

In conjunction with Applicant's appeal for special exception, Applicant respectfully requests a variance from the provision of Section 14.2(a) requiring at least 1,000 feet from any approved special exception use and any existing residential use on a separate lot. The Apartment house in question is approximately 808 feet from the location on the Property where First Breach intends to assemble ammunition and store the smokeless powder. The Applicant requests this variance on the grounds that the 1,000 foot buffer from an existing residential use on a separate lot create a practical difficulty for the Applicant and First Breach.

1. Strict compliance would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome.

Strict compliance with the 1,000-foot buffer would preclude the expansion of First Breach's ammunition component manufacturing business to assembly of the components for finished ammunition. Smokeless powder is a necessary component of small caliber ammunition. First Breach's current operations are a principally permitted use in the IG District. Adding ammunition assembly is a natural expansion of those existing operations and permissible as a special exception use in the IG, following a hearing before the BZA. First Breach intends to locate the ammunition assembly and smokeless powder storage within their existing shop, inside a secured area. Forcing strict compliance would



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unreasonably prevent First Breach to expand their ammunition assembly business. Moreover, compliance could only be achieved through a physical relocation of the First Breach facility to another location. The Property is home to other tenants with active and ongoing business operations. The Hagerstown Aviation Museum is also a tenant on the Property. Requiring First Breach, its neighbor tenants, including a Museum which displays actual airplanes to physically relocate would be a monumental undertaking and potentially damaging to the air craft on display and renders conformance unnecessarily burdensome.

2. Denying the variance would do substantial injustice to the applicant and a lesser relaxation than that applied for would not give substantial relief.

A reduction of the buffer to 808 feet is the absolute minimum needed for the applicant to then conform to the Zoning Ordinance. Any lesser reduction would be insufficient for relief. Denying the variance would preclude the Applicant to expand its business operations, harming the relationship between the Applicant, its landlord and the county. It would be logical to assume that First Breach could look to move to another location, thereby harming the Applicant's ongoing efforts to revitalizing an industrial area and creating jobs in Washington County which formerly house the Fairchild's manufacturing activities.

3. Granting the variance would observe the spirit of the Ordinance and secure public safety and welfare.

The Property is zoned Industrial General. Surrounding properties within 1,000 feet of the Property are similarly zoned for commercial purposes . Washington County has made clear this area is to be commercial and industrial in nature. But for, the residential structure's status as a pre-existing non-conforming use, it would otherwise not be permitted at its current location or anywhere else within 1,000 feet of the Applicant's proposed use. Granting the variance would permit the expansion of the Applicant's manufacturing operations located within a zoning district that Washington County as established and intended for manufacturing uses and observe the spirit of the Ordinance. The variance request is for a mere 192-foot reduction of a buffer area and such reduction will not affect the residents on the property nor the residential use thereon. The Applicant's use will be located inside a secure room within the leased premises, thus ensuring public safety and welfare.

A check in the amount of Eight Hundred and 00/100 Dollars (\$800.00) for the Boards filing fee and a list of adjacent property owners are provided herewith.

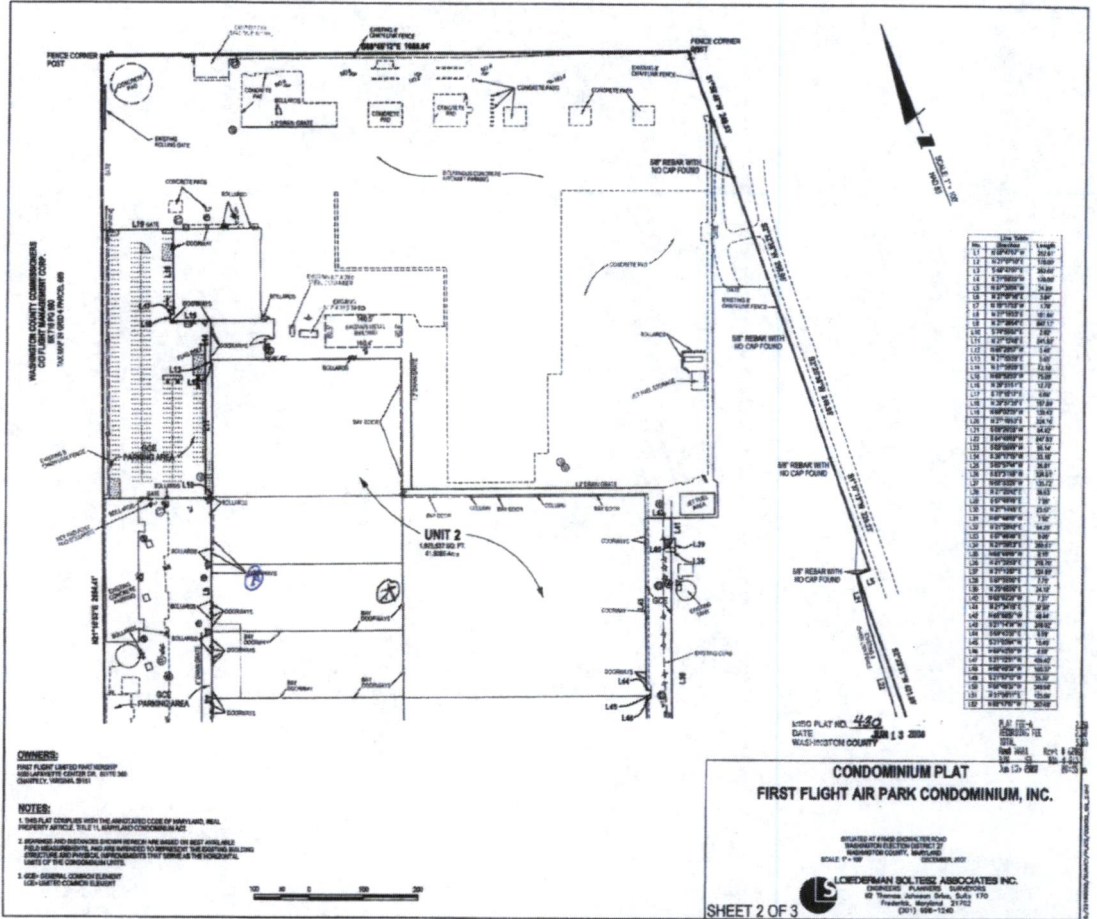


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WASHINGTON COUNTY CIRCUIT COURT (Photostatic Plat) Fee: \$25.00; Plat: \$147.25. Date available: 2018/06/13. Printed: 05/26/2018.



WASHINGTON COUNTY CIRCUIT COURT (Photostatic Plat) Fee: \$25.00; Plat: \$147.25. Date available: 2018/06/13. Printed: 05/26/2018.

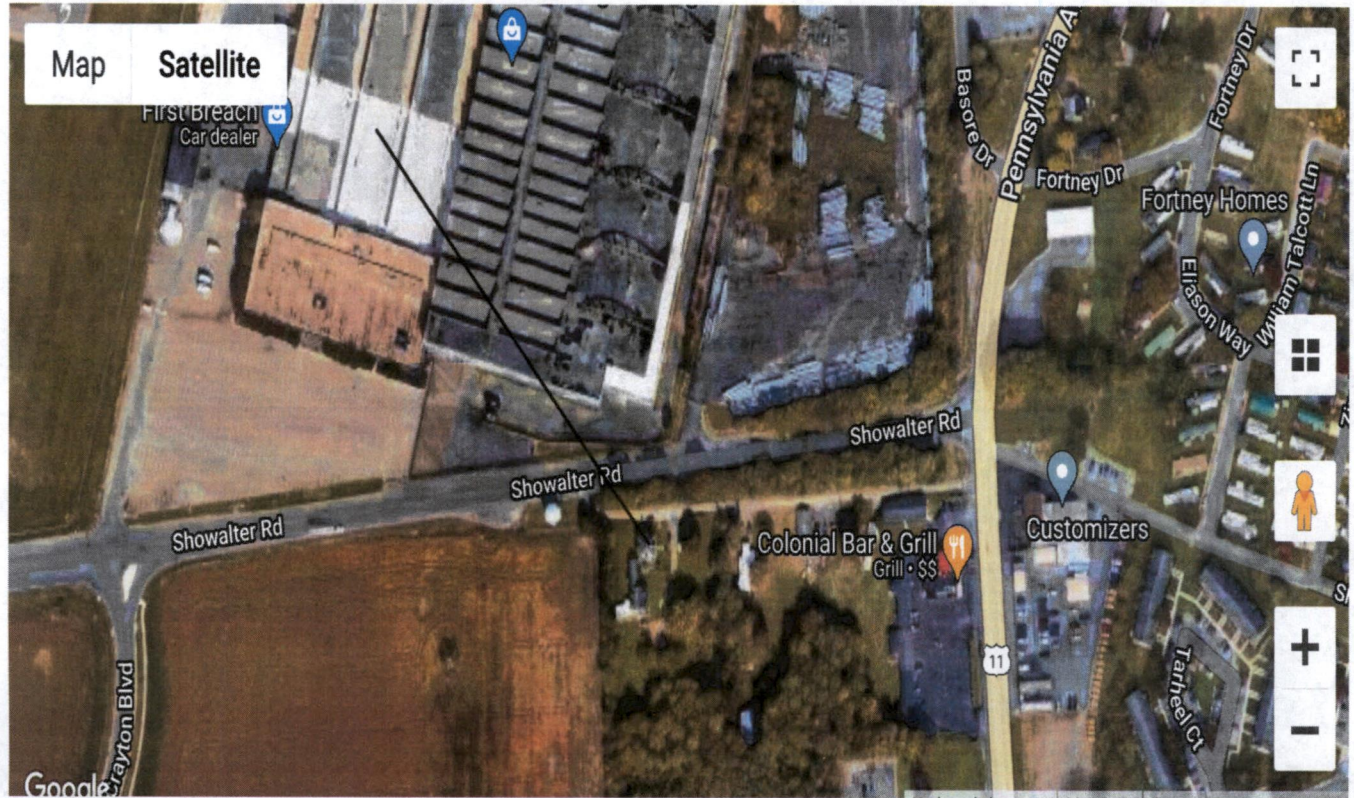


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Section Distance 246 meters , 808 feet 0.153 miles 0.246 km





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ADJACENT AND ADJOINING PARCELS

1. Owner: Board of Washington County Commissioners (Hagerstown Regional Airport)
 - a. Tax Account ID: 27-026141
 - b. Premises Address: 18434 Showalter Road, Hagerstown, MD 21742
 - c. Mailing Address: c/o Richard Lesh: 18434 Showalter Road, Hagerstown, MD 21742
 - d. Map/Parcel: 0024/0689
2. Owner: Board of Washington County Commissioners
 - a. Tax Account ID: 27-006124
 - b. Premises Address: 14225 Basore Drive, Hagerstown, MD 21742
 - c. Mailing Address: County Court House, Hagerstown, MD 21742
 - d. Map/Parcel: 0024/0656
3. Owner: Board of Washington County Commissioners
 - a. Tax Account ID: 27-014674
 - b. Premises Address: 14222 Oak Springs Road, Hagerstown, MD 21742
 - c. Mailing Address: County Courthouse Complex, Hagerstown, MD 21740
 - d. Map/Parcel 0024/0657
4. Owner: Board of Washington County Commissioners
 - a. Tax Account ID: 27-019854
 - b. Premises Address: 14211 Basore Drive, Hagerstown, MD 21742
 - c. Mailing Address: Real Property Administrator, 100 W. Washington St. Hagerstown, MD 21740
 - d. Map/Parcel: 0024/0417
5. Owner: Milestone Associates
 - a. Tax Account ID: 27-005950
 - b. Premises Address: 14240 Pennsylvania Avenue, Hagerstown, MD 21742
 - c. Mailing Address: 10228 Governor Lane Blvd #3002, Williamsport, MD 21795
 - d. Map/Parcel: 0024/0416
6. Owner: Tony's Pizza Italian Restaurant Inc.
 - a. Tax Account ID: 27-019773
 - b. Premises Address: 14224 Pennsylvania Avenue, Hagerstown, MD 21742
 - c. Mailing Address: Same as Premises Address
 - d. Map/Parcel: 0024/0415
7. Owner: Lloyd G. Storm
 - a. Tax Account ID: 27-006396



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- b. Premises Address: 14215 Pennsylvania Avenue, Hagerstown, MD 21742
 - c. Mailing Address: 13191 Gruber Road, Clear Spring, MD 21722
 - d. Map/Parcel: 0024/0412
8. Owner: Lloyd G. Storm
- a. Tax Account ID: 27-006388
 - b. Premises Address: 0 Pennsylvania Avenue, Hagerstown, MD 21742
 - c. Mailing Address 13191 Gruber Road, Clear Spring, MD 21722
 - d. Map/Parcel: 0024/0411
9. Owner: Board of Washington County Commissioners
- a. Tax Account ID: 27-003249
 - b. Premises Address: 14201 Pennsylvania Avenue, Hagerstown, MD 21742
 - c. Mailing Address: 100 W. Washington Street #1101, Hagerstown, MD 21740
 - d. Map/Parcel: 0024/0409
10. Owner: Kelly F. Eakle
- a. Tax Account ID: 27-008143
 - b. Premises Address: 14133 Pennsylvania Avenue, Hagerstown, MD 21742
 - c. Mailing Address: 429 Chartridge Drive, Hagerstown, MD 21742
 - d. Map/Parcel: 0024/0409
11. Owner: K D Manor LLC
- a. Tax Account ID: 27-017509
 - b. Premises Address: 18531 Showalter Road, Hagerstown, MD 21742
 - c. Mailing Address: 17810 Sherman Avenue, Hagerstown, MD 21740
 - d. Map/Parcel: 0024/1059
12. Owner: Perini Industrial Land LLC
- a. Tax Account ID: 13-016666
 - b. Premises Address: 0 Showalter Road, Hagerstown, MD 21742
 - c. Mailing Address: 13725 Marsh Pike, Hagerstown, MD 21742
 - d. Map/Parcel: 0024/0470

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

FIRST BREACH, LLC

Appellant

*

*

Appeal No.: AP2024-014

*

*

* * * * *

OPINION

First Breach, LLC (hereinafter “Appellant”) requests a special exception for an expansion of the previously approved explosive manufacturing/storage of ammunition primers to include small arm ammunition assembly and manufacturing, storage of smokeless propellant and the accessory use of a testing area for products produced at the subject property. Appellant also requests a variance from the minimum required setback/buffer of this use of 1,000 feet from any residential district/existing residential use on a separate lot and/or any residential portion of a mixed-use district to 808 feet at the subject property. The subject property is located at 18450 Showalter Road, Bays 1 & 2, Hagerstown, Maryland and is zoned Industrial, General. The Board held a public hearing in this matter on April 24, 2024.

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 18450 Showalter Road, Bays 1 & 2, Hagerstown, Maryland and is owned by Appellant. The subject property is zoned Industrial, General.
2. The subject property consists of approximately 41 acres, housing a 900,000

square-foot industrial park that used to be occupied by the Fairchild Aircraft Manufacturing Company. The subject property is currently home to Appellant and several industrial and commercial uses, as well as the Hagerstown Aviation Museum.

3. Bays 1 and 2 of the subject property are currently leased to Appellant, which manufactures ammunition components.

4. Appellant's existing business operation consists of manufacturing non-explosive ammunition components and primers but does not utilize or store gunpowder. They have two (2) shifts for their twenty (20) employees, Monday through Friday from 8:00 a.m. to 4:00 p.m. and 4:00 p.m. to 12:00 a.m.

5. Appellant has been approved and licensed by the Bureau of Alcohol, Tobacco, and Firearms to manufacture ammunition and ammunition components. They employ a fire and explosive consultant as a safety precaution for its manufacturing operation.

6. Appellant obtained special exception approval to expand its manufacturing for primers in addition to the ammunition components in Case No. AP2022-032 on August 15, 2022.

7. There is a residential use on a separate lot 808 feet from the subject property and located at 18531 Showalter Road.

8. Appellant proposes to expand its current operation to include assembly of the ammunition components, storage of smokeless powder and testing as an accessory element to manufacturing.

9. Appellant would dedicate an area for indoor testing of the manufactured products for quality control and safety.

10. The Bureau of Alcohol, Tobacco and Firearms suggested the proposed expansion as it is more efficient for tracking whole ammunition compared to separate components.

11. There was no opposition presented to this appeal.

Rationale

Special Exception

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, Appellant is seeking the Board’s approval to add the assembly of manufactured ammunition components and the storage of smokeless powder to the existing ammunition component and primer manufacturing operation. In many ways this is a logical and foreseeable extension of the existing business and one that has been prompted by the federal government. There was no evidence that material changes would be made to the buildings or structures at the subject property. The manufacturing operation is contained inside 2 bays which were previously used for manufacturing aircraft, thus there will not be odors, noise, dust, or gas produced from the operation.

The primary consideration for the Board is whether the proposed use creates an inherent danger or risk to public welfare. The assembly of the ammunition components has no additional or material effect on the safety of the manufacturing operation. Appellant testified that smokeless powder is preferred and is not subject to the typically strict requirements imposed for gunpowder. Although there is some risk inherent to the storage of powder, it is mitigated by Appellant’s safety measures, the nature of the manufacturing process and the location of the business in the industrial park which results in minimal impact on the surrounding area. 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.

Variance

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 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 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.)

Section 14.2(a) of the Ordinance requires a minimum of 1,000 feet distance from any approved special exception use and any existing residential use on a separate lot. At 18531 Showalter Road, Hagerstown, Maryland, there is a house that has been converted into apartments. The property is zoned Highway Interchange, and the apartments would not be principally permitted, but for their existence as a non-conforming use. The apartments are 808 from the subject property and proposed explosive manufacturing and storage operation.

¹ “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).

As noted, Appellant has taken significant steps to mitigate any impact of the manufacturing operation on the surrounding area. The proposed use is a logical and reasonable expansion of Appellant's existing business and would otherwise be prohibited if strict compliance with the setbacks were required. The alternative would be for Appellant to seek alternative locations for its component assembly and smokeless powder storage. This would likely create substantial hardship given the synergy and logistical efficiency associated with locating all of their operations at the subject property. Furthermore, the subject property is ideal for the existing operation and the proposed expansion. It is in a traditionally industrial area, bounded by the airport and other commercial and highway interchange uses. The Board finds that practical difficulty exists and that that Appellant has satisfied the variance criteria.

Accordingly, the request for a special exception for an expansion of the previously approved explosive manufacturing/storage of ammunition primers to include small arm ammunition assembly and manufacturing, storage of smokeless propellant and the accessory use of a testing area for products produced at the subject property is GRANTED, by a vote of 5-0. The request for a variance to reduce the minimum required setback/buffer of this use of 1,000 feet from any residential district/existing residential use on a separate lot and/or any residential portion of a mixed-use district to 808 feet at the subject property are GRANTED, by a vote of 5-0. Both the special exception and the variance relief are granted upon the condition that the proposed use be consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Jay Miller, Chair

Date Issued: May 23, 2024

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.