

HAGERSTOWN BOARD OF ZONING APPEALS

November 10, 2022 – 7 p.m. – Council Chamber – 2nd Floor, City Hall

AGENDA

Call to Order-

Applications Filed for November Hearing:

Case No. Z-2022-07.

To hear an application made by Johnson, Williams, and Associates for a special exception for a child daycare facility in the RO (Residential: Office) Zoning District, located at 240 South Potomac Street, and the following variances: 1) to reduce the required number of parking spaces from eighteen (18) to six (6), 2) to reduce the minimum required lot area for a special exception use from 15,000 square feet to 12,300 square feet and 3) to reduce the required minimum lot width for a special exception use from 80 feet to 61.23 feet, per Section D.5.a and Section O of the Zoning Ordinance.

Case No. Z-2022-08.

Case No. Z 2022-08. To hear an application made by Hagerstown Goodwill Industries, Inc. for a special exception for a retail use in the IR (Industrial Restricted) Zoning District, located at 200 North Prospect Street, and for a variance to reduce the required number of parking spaces from 48 spaces to 27 spaces, per Section O.4 of the Zoning Ordinance.

Case No. Z-2022-09.

To hear an administrative appeal made by Herbert Williams for a notice of violation of the zoning ordinance for the development and use of an unimproved 0.4-acre (more or less) lot located at 160 South Prospect Street in the RMED (Residential Medium Density) Zoning District and the Prospect Street Historic District, said appeal being filed within 30 days of the date of said notice, and at least 21 days prior to the hearing, as required by Sections U.1 and 2 of the Zoning Ordinance.

Deliberations.

Other Business.

Proposed Meeting Schedule for 2023 (tentative).

Adjourn.

NOTICE:

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. 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 the City Clerk at 301.739.8577, ext. 113, or ADD 301.797.6617.

my file



CITY OF HAGERSTOWN, MARYLAND

Planning & Code Administration Department

One East Franklin Street • Hagerstown, MD 21740

E-mail: planning@hagerstownmd.org

Telephone: 301-739-8577, ext. 138 • Website: www.hagerstownmd.org

MEMORANDUM

TO: Hagerstown Board of Zoning Appeals Members

FROM: *SRB* Stephen R. Bockmiller, AICP
Development Review Planner/Zoning Administrator

SUBJECT: Schedule For 2023

DATE: November 4, 2022

We will be working later today (after your packages are mailed) or Monday morning to put together a draft meeting schedule for 2023. We have placed this on your agenda for Thursday to discuss. If we get it out to you no later than Monday, you should have sufficient time to review it and vote to adopt it on Wednesday.

Thanks.

CITY OF HAGERSTOWN, MARYLAND
BOARD OF ZONING APPEALS
STAFF REPORT

CASE NUMBER: Z-2022-07 **HEARING DATE:** November 10, 2022

APPLICANT: Johnson, Williams and Associates **ZONING:** RO (Residential-Office)

SITE LOCATION: 240 South Potomac Street

REQUEST: Special exception to establish a child day care center in the RO (Residential Office) Zoning District, and the following variances:

1. Reduce the minimum required lot area for a child day care center in the RO Zoning District from 15,000 square feet to 12,300 square feet, and
2. Reduce the required minimum lot width requirement for a child day care center in the RO District from 80 feet to 61.23 feet, and
3. Reduce the required number of parking spaces from 18 parking spaces to 6 parking spaces.

This application is being made for the reasons that under Article 4, Section Z, child day care centers require a special exception in the RO zoning district; and Article 4, Section D.5.a., the minimum required lot area for this use is 15,000 square feet and the minimum lot width requirement for this use is 80 feet in the RO District.

DEADLINE FOR WRITTEN DECISION: December 25, 2022

STAFF REPORT (Staff comments in *bold italics*):

1. Special Exception:

General Criteria for Special Exceptions (Article 4, Section U.8.a.(1)-(7):

- (a) No special exception shall be approved by the Board of Zoning Appeals until and unless the Board finds in its written order that the application complies with the following criteria:
- (1) **Complete Application and Documentation.** A written application for a special exception is submitted by a person or persons with a financial, contractual, or proprietary interest in the property indicating the section of this ordinance under which the special exception is sought, stating the grounds on which it is requested, and including a concept plan of the proposed use which outlines the specific characteristics of the intended use on that site. *An application has been filed by the owner of the property. The description of use of the property states that there will be approximately 200 persons per day at the site, including 13 staff. It does not state the number of children to be cared for on-site at any given time. The applicant will have to clarify this with the Board on the record.*

- (2) **Authority to Grant Special Exception and General Standards.** The Board of Zoning Appeals shall make a finding that it is empowered under the section of this ordinance described in the application to grant the special exception and that the granting of the special exception will not materially or adversely affect the adjoining and surrounding properties, if: (a) the characteristics of the use and its operation on the property in question as proposed in the application or concept plan will not create any greater adverse impact than the operation of such a use on any other property with the same zoning; and (b) The proposed activity will comply with all conditions and requirements set forth for the specific use in that zoning district. In making this determination, the Board shall consider, among other things, the impact of the proposed use on neighborhood parking and traffic and whether any proposed activities will create adverse visual, dust, odor, smoke, gas, noise, or similar impact for surrounding properties. *The Ordinance lists a child day care center on a property in the RO zoning district as a special exception use. There are minimum lot area and lot width requirements for this use, and the applicant seeks variances to these requirements, as summarized elsewhere in this report. The Ordinance requires a lot area of at least 15,000 square feet, and a lot width of 80 feet, and variances are sought for these requirements as summarized elsewhere in this report. Regarding the parking requirement variance, this request is more complex than your typical request in that the Ordinance requires the Zoning Administrator to make a determination on the amount of parking the Ordinance requires based on data provided. Please see the Zoning Administrator's memorandum of October 5, 2022. It was determined that for a daycare center use of this size, 18 parking spaces are required and the Applicant seeks a variance to reduce the required number of spaces from 18 to six. The Applicant proposes to lease spaces in a commercial parking lot on East Washington Street for staff use.*
- (3) **Conditions of Approval.** In granting any special exception, the Board of Zoning Appeals may prescribe any special conditions in addition to those specified in the Ordinance which it feels are necessary to carry out the intent of this Ordinance and address the issues identified in (b), [2] above, so that protection of adjacent properties, the neighborhood as a whole, and the public interest are ensured. Violation of such conditions and safeguards when made a part of terms under which the special exception is granted shall be deemed a violation of this ordinance and punishable under Article 8, Section B, of this code. *Given the location, hours and size of the proposed use and the nature of the variances requested, specific conditions would be warranted, as determined by the Board.*
- (4) **Limited to Use Proposed to the Board.** No use or activity permitted by a special exception shall be enlarged or extended beyond the limits authorized in the grant of special exception without approval of the Board. *No Comment.*
- (5) **Expansion of a Nonconforming Use.** Under no circumstances shall the Board of Zoning Appeals grant a variance to allow a use not permitted under the terms of this ordinance in the zone involved or any use expressly or by implication prohibited by the terms of this ordinance in such zone. *Not applicable in this case.*
- (6) **Use Variances or Special Exceptions for Uses Not Enumerated.** Changes from one special exception use to another use permitted by special exception shall require approval by the Board. *Not applicable in this case.*

(7) **Special Criteria for this Use.** *None.*

2. **Variances:**

Variance Criteria (Article 4, Section U.8.b. – Pages 4-117 through 4-118)

- b. Variances. No variance shall be approved by the Board of Zoning Appeals until and unless the Board, in its written order finds that the application complies with the following criteria: An application has been filed by the contract purchaser, with the consent of the owners of the property.
- (1) **Unique Condition of Property.** Where by reason of exceptional narrowness, shallowness, shape, topographical conditions, or other unusual situations or conditions peculiar to a specific parcel of property, or of the use of the property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or undue hardship upon, the owner of the property. *The applicant needs to demonstrate to the Board's satisfaction compliance with subsection (1). They cite the existing size and configuration of the property as unique conditions warranting the three requested variances.*
 - (2) **Minimum Necessary to Afford Relief.** The variance requested is the minimum reasonably necessary to overcome the unusual conditions applicable to the property. *The applicant needs to demonstrate to the Board's satisfaction compliance with subsection (2).*
 - (3) **Compliance Would Preclude Common Use.** That the literal interpretation of the provisions of this Ordinance would deprive the applicant of uses commonly enjoyed by other similar properties in the same district under the terms of this Ordinance. *The applicant needs to demonstrate to the Board's satisfaction compliance with subsection (3).*
 - (4) **No Special Privilege.** That granting the variance will not confer on the applicant any special privilege that is denied by this Ordinance to other lands or structures with the same zoning. *The applicant needs to demonstrate to the Board's satisfaction compliance with subsection (4).*
 - (5) **Self-Created Hardship.** No variance shall be granted in any case where the applicant or their agent has created or caused to be created a situation which would or has necessitated the issuance of a variance in order for such property to comply with this Ordinance. *The applicant needs to demonstrate to the Board's satisfaction compliance with subsection (5).*
 - (6) **Consistent with the Intent of the Ordinance.** That the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The Board may prescribe appropriate and specific conditions and safeguards, including location, construction, maintenance, and operation in conformity with the Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be a violation of this Ordinance. *The applicant needs to demonstrate to the Board's satisfaction compliance with subsection (6). Given the nature of the site and the intensity of the variances requested, it would seem consideration of conditions to protect surrounding residents and property owners would be appropriate in this case.*

Use Variances Prohibited. Under no circumstances shall the Board of Zoning Appeals grant a variance to allow a use not permissible under the terms of this ordinance in the zone involved or any use expressly or by implication prohibited by the terms of this ordinance in such zone. *This provision does not apply. A child day care center is enumerated as a special exception use in the RO District, resulting in this application. Since the use is a special exception use enumerated in the Ordinance, this provision regarding “use variances” does not apply in this case, and the Board is within its authority to consider it.*

Recommendations Submitted by Boards, Commissions, and City Departments (Article 4, Section U.6):

- Planning Commission: *Report not received in time for mailing.*
- Historic District Commission: *Not applicable.*
- Board of Traffic and Parking: *Report not received in time for mailing.*
- Other: *Not applicable.*



CITY OF HAGERSTOWN, MARYLAND

Planning and Code Administration Department

Memorandum

TO: Hagerstown Board of Zoning Appeals

FROM:  Stephen R. Bockmiller, AICP, Development Review Planner/Zoning Administrator

SUBJECT: Parking for Day Care Center Uses

DATE: October 5, 2022

In the currently pending special exception and variance application for 240 South Potomac Street, the issue of parking was raised in staff review of the application. Special exception uses are required to meet parking requirements (although applicants may apply for variances to parking requirements). Parking requirements are found in Section O of the Zoning Ordinance. There is a chart of various uses and the parking required for each. Child day care centers are not on this list. The Ordinance states:

Unless otherwise enumerated in the above chart, the number of parking spaces required shall be determined by the Zoning Administrator based on the standards found in the *Institute of Transportation Engineers Parking Generation Manual, 3rd Edition*. When a use is not addressed in the *Parking Generation Manual*, the Zoning Administrator shall render an interpretation of the nearest use addressed in the Manual. Parties aggrieved by the Zoning Administrator's assignment of appropriate classification based on the above reference may appeal said decision to the Board of Zoning Appeals.

I consulted the aforementioned manual. It uncharacteristically offers multiple methods for calculating parking for this use; 1) by number of children cared for on site, 2) by number of employees and 3) by the gross square foot area of the building used for the day care center. A rough calculation of all three figures shows that the total number of parking spaces required doesn't appear to deviate by more than about 25 percent between the methods used. They all have good statistical samples (ranging from 29 to 37 studies each), and appear to be of comparable size and enrollment as this proposal. I also consulted the City Engineer's office and they advised using the more static of methods, recommending against using the method based on the number of children cared for, which would fluctuate more than the number of staff, or the size of the building which would not fluctuate at all.

Based on the authority vested in me on this matter by the Zoning Ordinance, it is my determination that parking requirements shall be based on the number of employees on the property. Using the 13 employees they state will work on the site, the required parking should be 1.35 spaces per employee. Therefore, I determine that the parking required for this use is 13 staff x 1.35 spaces per employee = 17.55 parking spaces. Requirements are rounded up, so the requirement for this use is 18 spaces. If this proposal does not provide 18 parking spaces on the property or within 500 feet on a property designated for this use, a variance to the parking requirement will be necessary.

Parties aggrieved by this decision may appeal this determination to the Board of Zoning Appeals within 30 days of the date of this memorandum.

Copy: Applicant



CITY OF HAGERSTOWN, MARYLAND

Planning and Code Administration Department

BOARD OF ZONING APPEALS – SPECIAL EXCEPTION APPLICATION

Submittal Requirements:

- Original application with original signatures and 9 copies
- 10 copies of all site drawings and any additional supporting documentation
- Filing fee (please consult current fee schedule)

Case No. Z- 202207

Office Use Only

Munis #: 20222931

Location of Property: 240 South Potomac Street, Hagerstown, MD 21740
(Please include street address, if known)

Size of Property (acres/square feet): 4500 sq. ft.

Applicant's Interest in Property:

- Owner (including joint ownership) Other (describe your interest in the property on the lines below and provide the name, address, and telephone number of the owner. **Attach written authorization from the owner of the property that they consent to this appeal, or have them sign this application form as a co-applicant.**

We would like to convert an existing office building to a daycare center.

Devonte Dinkins, 101 E Baltimore Street, Hagerstown, MD 21740, 301-310-7149

Applicant's Name: Johnson, Williams and Associates, Corporation

Trading As (if applicable): Think N Bee Learning Center Email: admin@thinknbee.com

Mailing Address: 6534 Mercantile Drive West, Frederick, MD 21703

Daytime Telephone: 301-508-9052 Fax: 301-263-7749

Attorney (legal counsel is not required, but if an attorney will represent you, please complete this section):

Name of Attorney: _____ Email: _____

Mailing Address: _____

Telephone: _____ Fax: _____

This Chart for Staff Use Only	Munis #:	
Date Accepted for Processing:	Drawing Attached:	Yes No
Zoning District:	Posting Deadline:	
Assigned Hearing Date:	Opinion Due:	

Special Exception Request:

The undersigned hereby applies to the Board of Zoning Appeals for approval of a special exception under Section(s) U.8.a(7) of the Zoning Ordinance (Article 4 of the Land Management Code), pertaining to the RO zoning district for the following use(s):
child day-care services (624410).

Description of Proposed Use:

A. Present or most recent use of the subject property:

The property is presently an existing office building.

B. Proposed use of property, including any existing or permitted uses of the property that would be conducted on the site, in addition to the special exception use (include number and type of dwellings, area and use of commercial and industrial buildings and/or land uses):

The proposed use of the property is a daycare center.

C. Provide a description of the operation of the proposed use, including where applicable: types of activities; hours of operation; number of employees, occupants, and customers; quantity and types of vehicles and trips to be generated to and from the site:

The property will house a daycare center between the hours of 6 AM - 6:30 PM, Mon- Fri. The number of employees, occupants, and customers will total approximately 200 people within a business day. Customer numbers increase and decrease between pick-up and drop off hours (6:00 AM-9 AM; 3:30 PM-6:30 PM). There will be 2 passenger vans to facilitate field trips and school pick-ups and parental vehicles for pick-up and drop off.

D. Some special exception uses have specific performance conditions cited in the Zoning Ordinance. Please provide additional information necessary to determine whether the proposed special exception complies with specific performance criteria (when applicable):

Under section u.8.a(7), there are no specified special exception criteria for child day-care services (624410).

E. If the Zoning Ordinance has a minimum lot size requirement for this proposed use, list the requirement or write "not applicable."

Not applicable

F. Please list any other factors or information you would like the Board of Zoning Appeals to consider.

We are requesting to change the current parking zone for the 3 parking spaces in front of 240 South Potomac Street to be loading zones during the hours of 6:30 am - 9 am and 3:30 PM - 6:30 PM. This request will not interfere with the current signage for street cleaning (picture of current sign is attached with request).

G. Special exception uses are required to provide parking required by Section O. of the Zoning Ordinance. Based on the requirements of Section O., how many parking spaces are required for this use? How many parking spaces are provided for this use and other uses on this property? On-street parking spaces shall not figure into the total number of spaces provided. Count only those spaces on the property. If the parking provided on the property does not meet minimum requirements for all uses on the subject property, the applicant may proceed but completing a variance application seeking the Board of Zoning Appeals' approval of a variance to reduce this requirement is required.

We will use the current zoned parking for the RO space which includes 6 parking spaces in the rear of 240 South Potomac Street, the 3 proposed loading zone spaces, and the overflow parking lot on 20 West Baltimore Street (property owner approved).

H. Some special exception uses have specific performance conditions cited in the Zoning Ordinance. Please provide additional information necessary to determine whether the proposed special exception complies with specific performance criteria (when applicable); see Section U.8.a.(7):

Not applicable

Special Exception Site Drawing:

In order for the Board of Zoning Appeals to have a clear understanding of the unique conditions of your property and your special exception request(s), you must submit a drawing of the property with this application, showing the property lines, the property's relationship to adjacent streets and buildings, the location of existing buildings on the site, and proposed improvements that would occur if the special exception(s) is/are granted. Attach a copy to the original application form and each of the nine copies submitted.

Attached to this application is a sample drawing for you to use as an example and guide in preparing a drawing for your application.

Additional Materials, Fees, Posting, and Advertising:

A. If desired, supplemental pages may be attached to this application.

This original application form and nine (9) copies of the application must be submitted. If the applicant desires to submit additional materials, pages, etc., ten (10) copies are required. However, additional copies of original photographs and large graphic exhibits are not required. Single copies of original photographs and large graphic exhibits are sufficient. Please do not mount large exhibits to foam core or other rigid backing, as the exhibit can be damaged when removed for placement in the file.

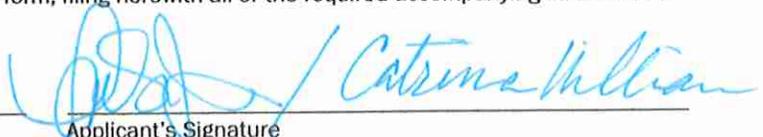
B. The undersigned agrees to properly post the property at least ten (10) days immediately prior to the hearing and maintain the poster(s) during the period the property is required to be posted. Failure to comply with this requirement will delay the Board hearing the case.

C. The undersigned agrees to pay all costs in accordance with the current fee schedule adopted by the Mayor and City Council. Checks are to be made payable to the "City of Hagerstown."

Signatures

The undersigned hereby affirms that all of the statements and information contained in, or filed with, this petition are true and correct. The undersigned has read the instructions on this form, filing herewith all of the required accompanying information.

Attorney's Signature (if applicable)



Applicant's Signature

Devonte Dinkins

Property Owner's Signature (if other than applicant)

What is a Special Exception and what are the Standards Used by the Board to Make a Decision?

A special exception use is a use that is generally considered permitted in a zoning district, but the Board of Zoning Appeals must review the proposal to ensure that there are no unique impacts created by the proposal that would inordinately impact adjacent or nearby properties more than is generally inherent to the use in this district.

Simply stated, the Board makes sure that the proposed use is no worse at this particular site than it would be at any other typical property in the same zoning district. The process assumes there will be impacts. The question to be answered is: "Are the impacts of the proposed use greater at this location than it would be at other properties in the same zoning district"?

In order to approve a special exception the Board of Zoning Appeals must:

1. Receive this completed application, provided by you and submitted at the Planning and Code Administration Department.
2. Find that they have the power to grant the special exception. The Board has no authority to grant a special exception for a use that is not listed on the list of permitted special exceptions.
3. Find that granting the special exception will not materially or adversely affect the public interest. In making this determination, the Board shall consider, among other things, the impact of the proposed use on neighborhood parking and whether any proposed activities will create adverse visual, odor, dust, and/or noise impacts for surrounding properties.

This is explained in more detail in the Zoning Ordinance, Section U.8.a.

It is these standards that you should be prepared to address at your hearing in order for the Board of Zoning Appeals to be able to approve your special exception.

In granting any special exception, the Board may prescribe appropriate conditions and safeguards in conformity with the Zoning Ordinance and the issues considered in #3 above. Violation of such conditions and safeguards when made a part of the terms under which a special exception is granted, shall be deemed to be a violation of the Zoning Ordinance, subject to enforcement action.

For more information, please contact:

Hagerstown Planning and Code Administration Department
City of Hagerstown, Maryland
One East Franklin Street, Suite 300
Hagerstown, MD 21740

T: 301.739.8577, ext. 138
F: 301.791.2650

Email: planning@hagerstownmd.org

Last Amended: 2/5/2020



**STREET
SWEEPING**

**NO
PARKING**

THIS SIDE

EACH THURSDAY

9AM - 11AM

**HELP KEEP OUR
CITY CLEAN**

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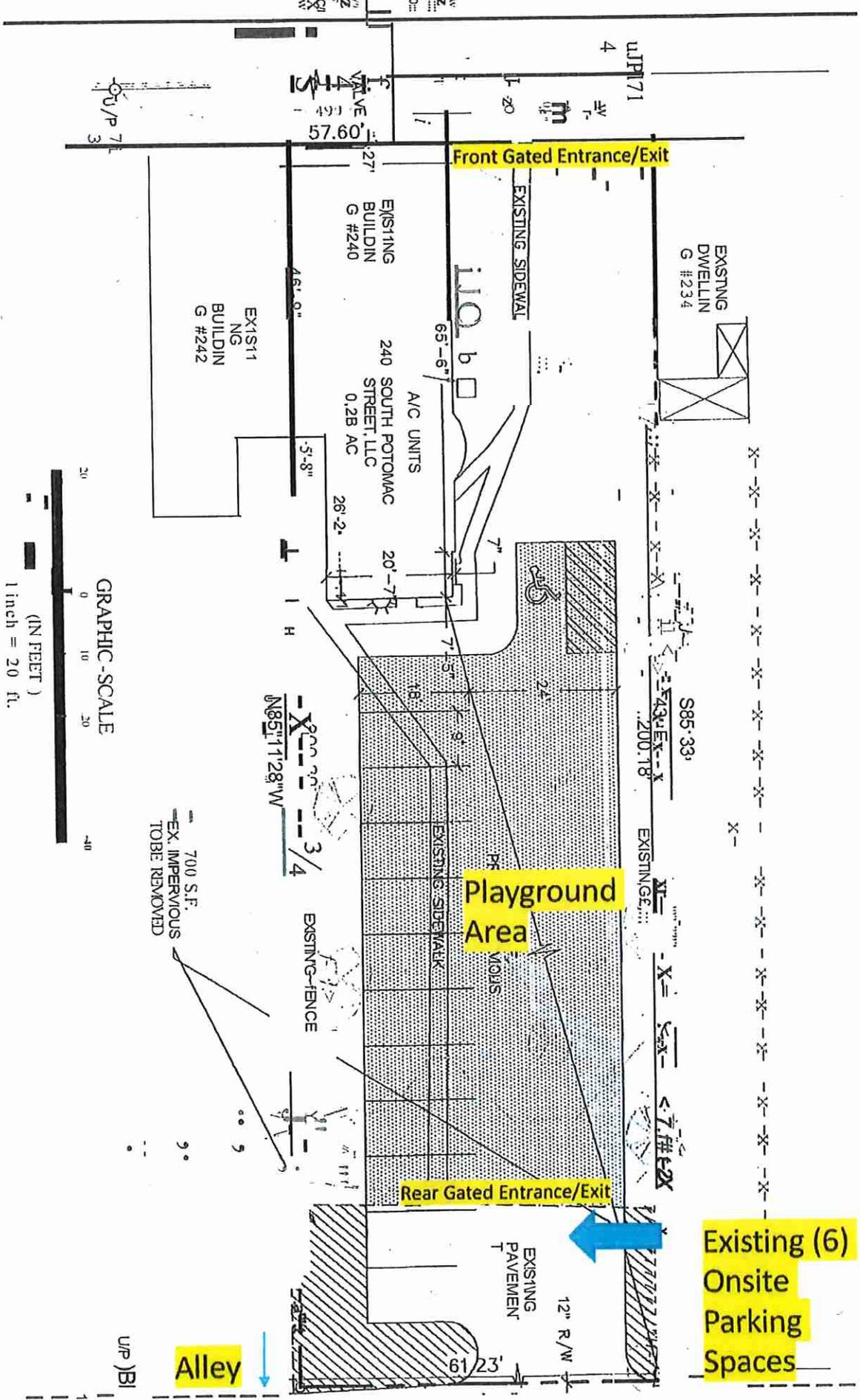
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Existing (6)
Onsite
Parking
Spaces

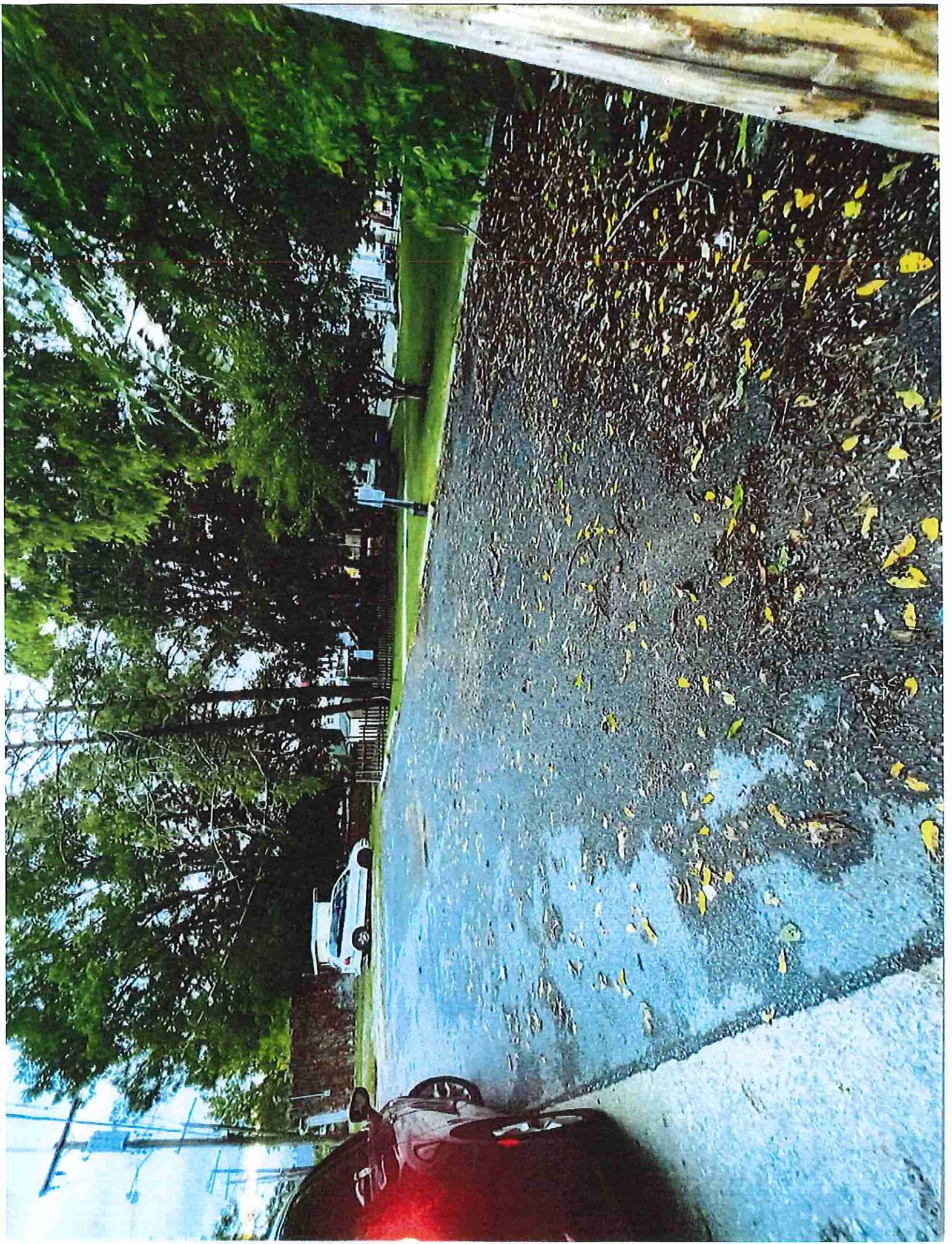
Playground
Area

Rear Gated Entrance/Exit

Alley

UP (B)

GRAPHIC SCALE
(IN FEET)
1 inch = 20 ft.





CITY OF HAGERSTOWN, MARYLAND

Planning and Code Administration Department

BOARD OF ZONING APPEALS – VARIANCE APPLICATION

Submittal Requirements:

- Original application with original signatures and 9 copies
- 10 copies of all site drawings and any additional supporting documentation
- Filing fee (please consult [current fee schedule](#))

Case No. Z- 2022-07
Office Use Only

Location of Property: 240 South Potomac Street, Hagerstown, MD 21704
(Please Include street address, if known)

Size of Property (acres/square feet): Lot 60X200

Applicant's Interest In Property:

- Owner (including joint ownership) Other (describe your interest in the property on the lines below and provide the name, address, and telephone number of the owner. Attach written authorization from the owner of the property that they consent to this appeal, or have them sign this application form as a co-applicant.)

Leasing building space from owner for daycare center use. Devonté Dinkins,
101 E. Baltimore Street, Hagerstown, MD 21740, 301-310-7149.

Proposed Use (Number and types of dwellings, area and use of commercial and industrial buildings):

Applicant's Name: Johnson, Williams and Associates, Corporation

Trading As (if applicable): Think N Bee Learning Center Email: admin@thinknbee.com

Mailing Address: 6534 Mercantile Drive West, Frederick, MD 21703

Daytime Telephone: 301-508-9052 Fax: 301-263-7749

Attorney (legal counsel is not required, but if an attorney will represent you, please complete this section):

Name of Attorney: _____ Email: _____

Mailing Address: _____

Telephone: _____ Fax: _____

This Chart for Staff Use Only	Munis #:	
	Yes	No
Date Accepted for Processing:	Drawing Attached:	
Zoning District:	Posting Deadline:	
Assigned Hearing Date:	Opinion Due:	

Variance Requests:

	See Below	Section of Zoning Ordinance (Article 4, LMC)	Type of Regulation (front setback, parking, etc.)	Ordinance Requirement	Proposed Dimension (Variance Requested) *See Below
Example		F.5.a.	Front yard setback	15 feet	5 feet
1.		D.5.a.	Minimum Lot area (Setback)	15,000 sq ft	12,300 sq ft
2.		D.5.a.	Lot Width (Setback)	80 sq ft	61.23 sq ft
3.		Section O	parking	18 spaces	6 On-site & 12 Off-site
4.					
5.					

** For applications involving multiple lots or properties, use this column to identify the specific lot that is the subject of this individual request. If only one property is involved in this application, please disregard this column.

*** The variance requested is the proposed dimension. Using the example above, if the setback requirement is 15 feet and you propose to go 10 feet into that requirement and have a new setback from the property line of 5 feet, the variance request is 5 feet.

Example: Requirement (15 feet) minus incursion into bulk requirement (10) feet = variance (new setback) requested (5 feet).

Description of Existing and Proposed Uses:

A. Present or most recent use of the subject property:

The property is presently an existing office building.

B. Proposed use of property, including any existing or permitted uses of the property that would be conducted on the site, size of proposed improvements (if construction is proposed):

The proposed use of the property is a daycare center.

Variance Exhibit:

In order for the Board of Zoning Appeals to have a clear understanding of the unique conditions of your property and your variance request(s), you must submit with this application a drawing of the property, showing the property lines, the property's relationship to adjacent streets and buildings, the location of existing buildings on the site, and proposed improvements that would occur if the variance(s) is/are granted. Attach a copy to the original application form and each of the nine copies submitted.

Attached to this application is a sample drawing for you to use as an example and guide in preparing a drawing for your application.

Board of Zoning Appeals Variance Criteria:

The Board will make a decision on your application based on conformance with the six criteria found at the end of this application. The following spaces are provided to assist you in preparing your testimony to the Board based on these criteria. If you need additional space, please attach additional sheets. A more detailed explanation is provided on pages 5 and 6 of this application.

- A. Explain the unique physical conditions associated with your property and how compliance with the strict letter of the regulations would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

Our building is located in the downtown area of Hagerstown which limits us on available properties

that also meets childcare regulations. The current building has 6 parking spaces on-site and requires 12 additional parking spaces to meet zone requirement. See attached our proposed parking plan.

- B. Explain how the requested variance(s) are the minimum reasonably necessary to overcome the conditions described in A. above.

240 S. Potomac is the largest property lot that meets the area's need for childcare services and childcare regulation. Allowing a mix of on-site and off-site parking will permit us to provide the requested parking spaces for the building use.

- C. Explain how enforcement of the provision from which the variance is requested would deprive the property owner of uses commonly enjoyed by other similar properties in the same district.

Enforcement of the provision will deprive the property owner the ability to operate a childcare center even though other childcare centers are able to operate with less square footage and dedicated parking spaces.

- D. Explain how the variance(s) requested will not confer special treatment on the applicant.

The variance(s) requested will not confer special treatment as another daycare center in the area located at 102 E. Washington Street, Hagerstown, is currently operating on a lot that is 12,067 sq. ft. and within a building that is 3052 sq. ft. Other neighboring centers rely on street parking to conduct business.

E. Explain how the property owner or applicant has not created the conditions that they now use as justification for seeking a variance.

We have not taken occupancy of the building. No conditions have been created to impact this variance request.

F. Explain how the requested variance will not be contrary to the intent of the Zoning Ordinance, will not be injurious to the neighborhood or the public welfare.

This variance request will allow us to be an asset to the community and to fulfill the neighborhood's current need for quality childcare services.

Additional Materials, Fees, Posting, and Advertising:

A. If desired, supplemental pages may be attached to this application.

This original application form and nine (9) copies of the application must be submitted. If the applicant desires to submit additional materials, pages, etc., ten (10) copies are required. However, additional copies of original photographs and large graphic exhibits are not required. Single copies of original photographs and large graphic exhibits are sufficient. Please do not mount large exhibits to foam core or other rigid backing, as the exhibit can be damaged when removed for placement in the file.

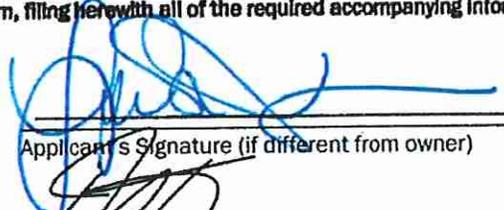
B. The undersigned agrees to properly post the property at least ten (10) days immediately prior to the hearing and maintain the poster(s) during the period the property is required to be posted. Failure to comply with this requirement will delay the Board hearing the case.

C. The undersigned agrees to pay all costs in accordance with the current fee schedule adopted by the Mayor and City Council. Checks are to be made payable to the "City of Hagerstown."

Signatures

The undersigned hereby affirms that all of the statements and information contained in, or filed with, this petition are true and correct. The undersigned has read the instructions on this form, filing herewith all of the required accompanying information.

Attorney's Signature (if applicable)



Applicant's Signature (if different from owner)



Property Owner's Signature (if other than applicant)

What is a Variance and what are the Standards Used by the Board to Make a Decision?

A variance is a deviation from the bulk requirements required by the Zoning Ordinance, such as setbacks, building height, number of parking spaces, etc. For example, if you want to build an addition to your house and you need to construct it ten feet from the property line, but the Ordinance requires that you keep it 20 feet from the property line, you need to apply for a variance. This process exists to provide reasonable accommodation of plans for properties that may be impacted by unique

physical conditions such as shape of the lot, topography, etc. The six criteria below are used by the Board of Zoning Appeals to evaluate whether a variance is appropriate. The variance process does not exist to simply waive the Ordinance requirements with which an applicant may find undesirable. In order to approve a variance, the Board of Zoning Appeals must make positive findings on each of the following six criteria (*simplified explanations and examples of what is an appropriate variance and what is not are provided in italics*).

1. Whereby reason of exceptional narrowness, shallowness, shape, topographical conditions, or other unusual situations or conditions peculiar to a specific parcel of property or of the use of the property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or undue hardship upon, the owner of the property; and

Example: An applicant wants to build a two-car garage like most of his neighbors have. Because of the shape of his property, or the location of the existing house, he cannot do it without building in violation of the setback. This is a reasonable argument for a variance. Requesting a variance to adjust a setback to build a four-car garage when most of his neighbors have only two-car garages is an example of when a variance is not appropriate. Simply wanting to build the garage closer to a property line because that is where he desires to place it, or seeking a variance in order to build improvements that are excessive compared to surrounding properties are not grounds for a variance.

2. The variance requested is the minimum reasonably necessary to overcome the unusual conditions applicable to the property; and

The applicant will need to demonstrate that the request she makes is the minimum necessary to accomplish her needs. She should not ask for a variance to reduce a setback to ten feet if she could reasonably build her desired improvements 12 feet from the property line. The applicant needs to determine the minimum that she needs and request that amount.

3. The literal interpretation of the provisions of this Ordinance would deprive the applicant of uses commonly enjoyed by other similar properties in the same district under the terms of this Ordinance; and

The applicant will need to demonstrate that failure to obtain the variance would not permit him to make similar use of his property as other similar properties in the same zoning district. For example, if the applicant's property is 5,000 square feet and most other lots of that size have two-car garages, the applicant needs to show that his request would allow him to construct improvements that are typical of the surrounding area; and if he does not obtain the variance, he would not be allowed to improve his property comparably to similar properties.

4. That granting the variance will not confer on the applicant any special privilege that is denied by this Ordinance to other lands or structures within the same zoning district; and

The applicant will need to demonstrate that her property meets these criteria, and that the Board will not be giving her special treatment by granting a variance that does not meet these standards. The Ordinance not permitting her to build what she desires is not grounds for approval of a variance.

5. No variance shall be granted in any case where the applicant or their agent has created or caused to be created a situation which would or has necessitated the issuance of a variance in order for such property to comply with the Ordinance; and

The applicant will need to demonstrate that he did not create the problem for which he now seeks a variance. For example, if a property owner desires to build an addition on a house and place it in a location that needs a variance, he will need to demonstrate that there is no other side or area on the house that could reasonably be used to construct the addition without the variance. Also, he will need to show that the addition is a reasonable size (i.e., the Board is not granting a variance to allow him to build an addition that would make his house significantly larger than other houses in the area). Desire to place more improvements on a property than it would normally be accommodated by a similar property is not grounds for a variance.

6. That the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The Board may prescribe appropriate and specific conditions and safeguards, including location, construction, maintenance, and operation in conformity with the Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be a violation of this Ordinance.

The applicant will need to demonstrate that her request will not harm her neighbor's reasonable use and enjoyment of their property, and will not damage the public welfare. An example of damaging the public welfare would be building an addition too close to a street intersection that the improvements block traffic visibility approaching the intersection, creating an unsafe traffic condition.

It is these standards that you should be prepared to address at your hearing in order for the Board of Zoning Appeals to be able to approve your variance.

In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with the Zoning Ordinance and the criteria considered above. Violation of such conditions and safeguards when made a part of the terms under which a variance is granted, shall be deemed to be a violation of the Zoning Ordinance, subject to enforcement action.

NOTE: Per Maryland law, the Board of Zoning Appeals is prohibited from granting a variance for a use that is not permitted in the district in which the property is located. For example, the BZA would be prohibited from approving a variance to establish a retail store or a car repair business in a residential district when the residential districts do not permit these uses.

For more information, please contact:

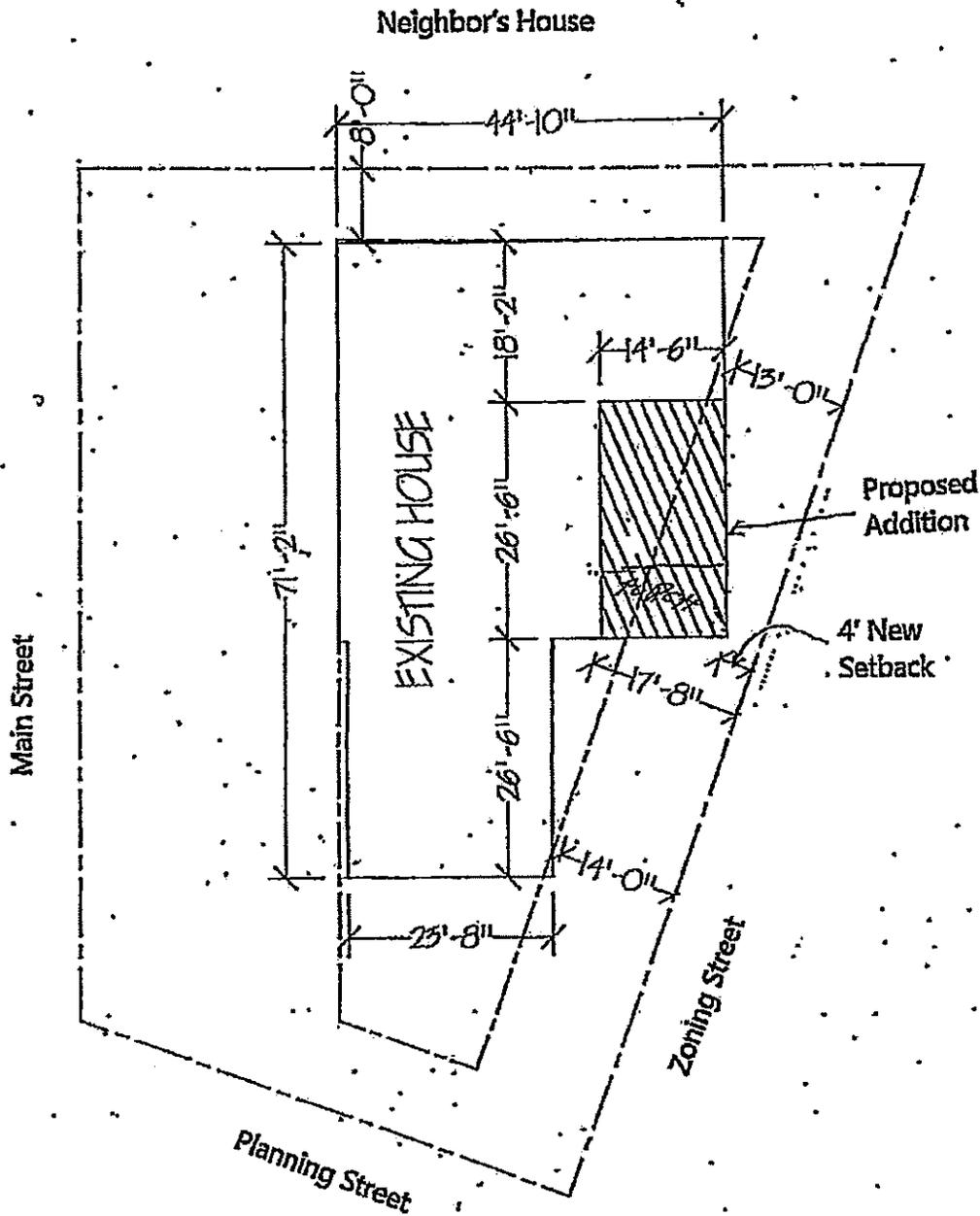
**Hagerstown Planning and Code Administration Department
City of Hagerstown, Maryland
One East Franklin Street, Suite 300
Hagerstown, MD 21740**

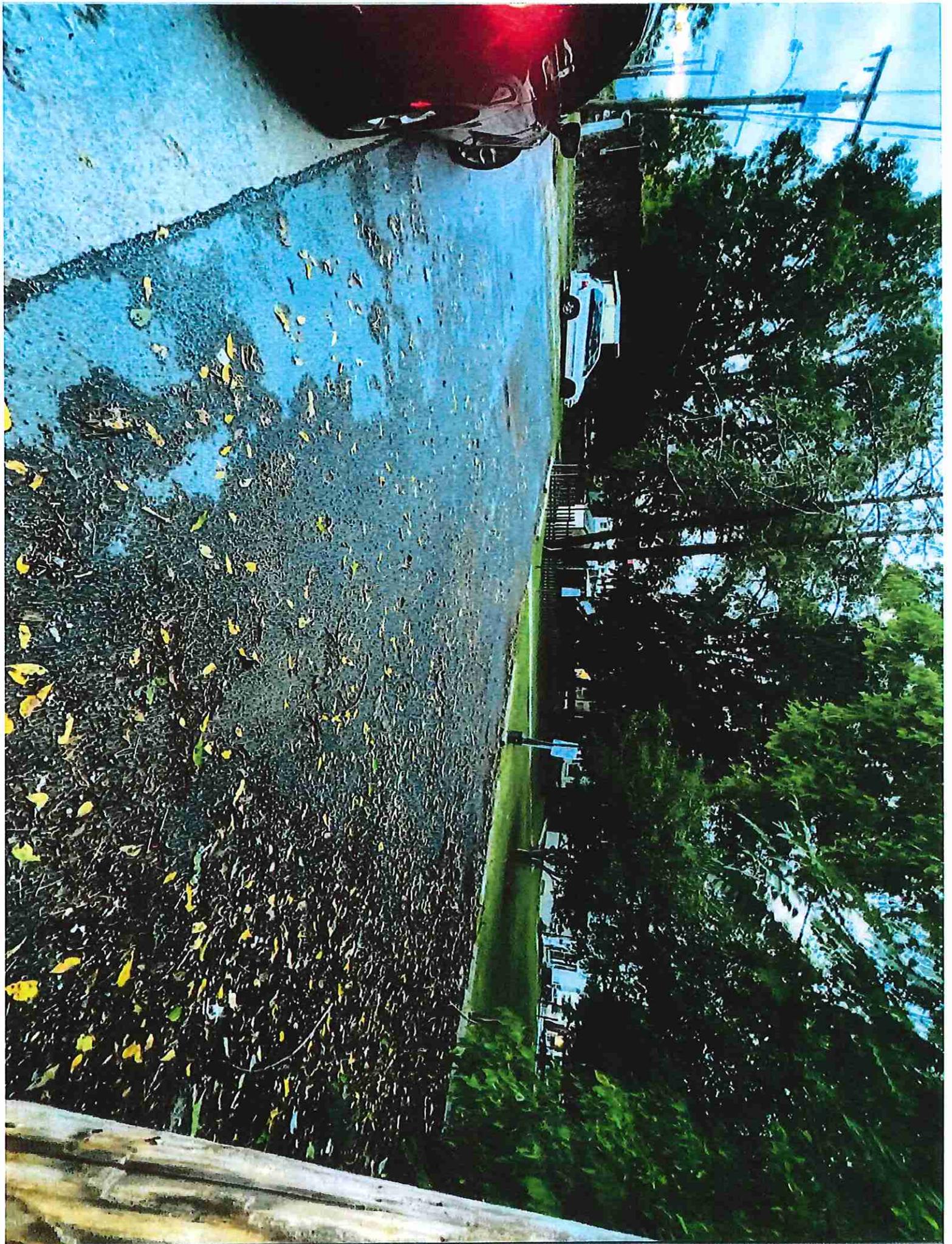
**T: 301.739.8577, ext. 138
F: 301.791.2650**

Email: planning@hagerstownmd.org

Last Amended: 2/2016

This drawing is an example of what will need to be provided as an exhibit with your variance application.



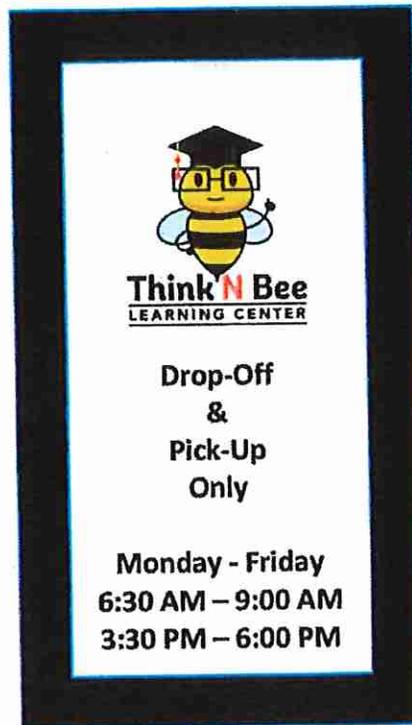


Parking Plan for 240 South Potomac Street, Hagerstown MD

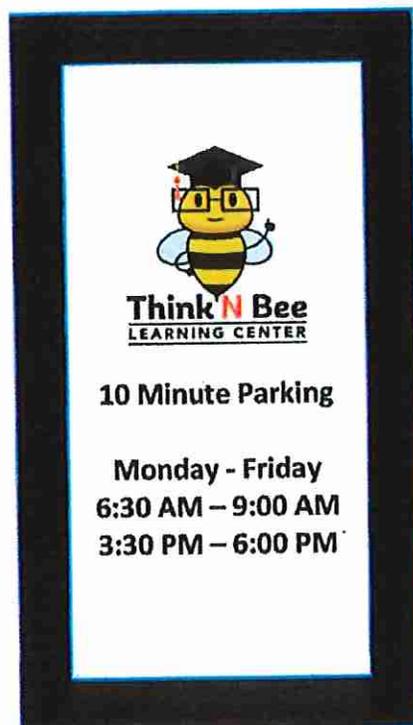
On-site Parking Plan (For Parents and Building Visitors)

Building currently has six (6) rear parking spaces. Two (2) parking spaces will have Signage A and four (4) will have Signage B. We will have staff to facilitate the two (2) drop-off and pick-up spaces.

Signage A



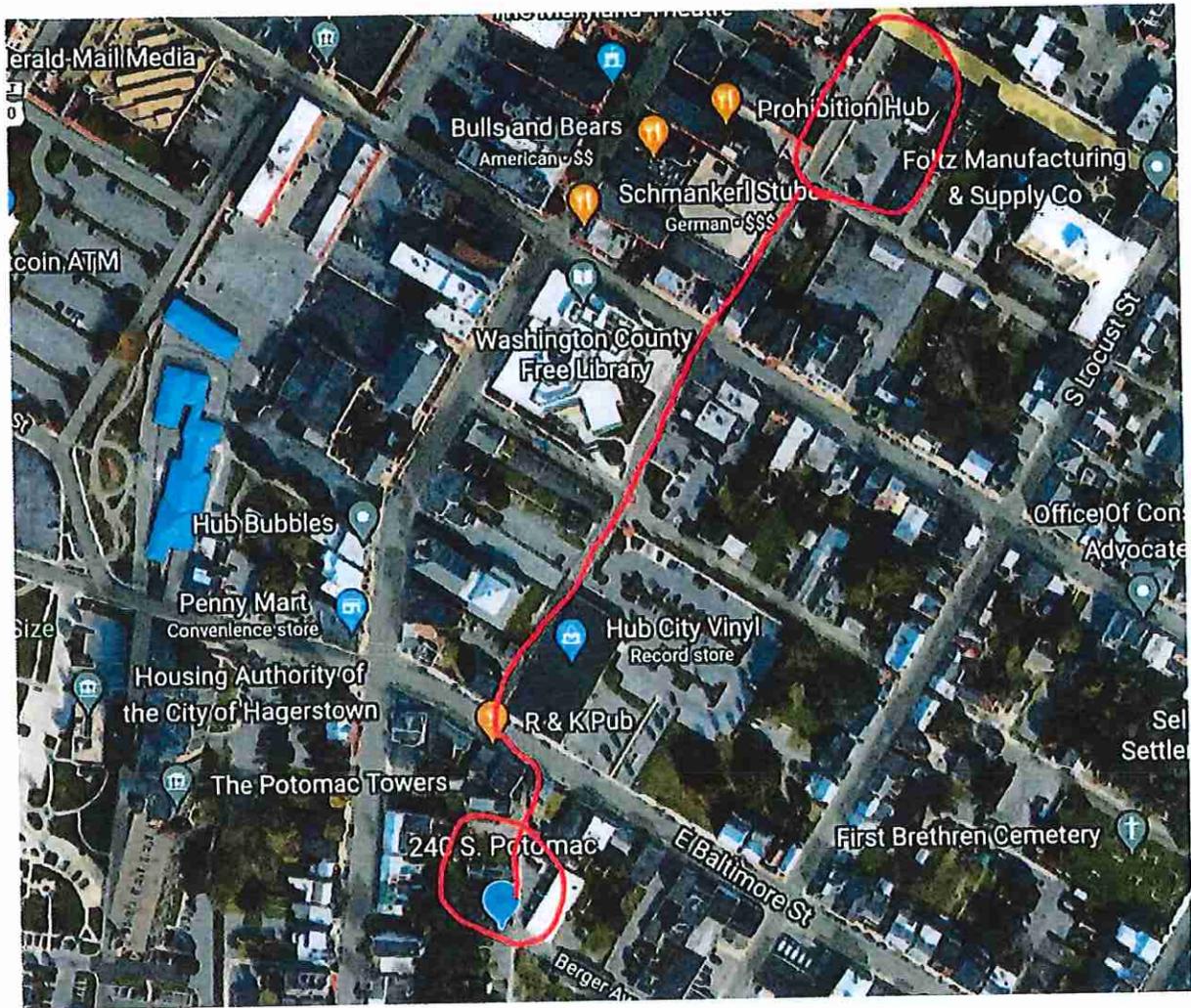
Signage B



Off-Site Parking (Employees)

We are contracting twelve (12) monthly parking spaces with Bowman Development Corporation Parking Facility. The contracted location is 25 Renaissance Way, Hagerstown, MD. These spaces are permitted and are available to our staff.





Stephen Bockmiller

From: LaKeisha Johnson <admin@thinknbee.com>
Sent: Wednesday, October 5, 2022 11:39 AM
To: Stephen Bockmiller
Cc: Devonte Dinkins; Kathleen Maher
Subject: Re: special exception application for day care

ATTENTION! This message originated from an **external source**. Please use proper judgment and caution when opening **attachments, clicking links, or responding** to this email. Any claims of being a City official or employee **should be verified** and not assumed to be true. Please contact the IT department if you have any questions or concerns about this email or its contents.

Hello Stephen,

Please see the bulleted responses below:

You have six on-site parking spaces and will have two vans (which will presumably would park in 2 of the 6 on-site spaces). Your description of your use says that there may be as many as 200 people coming and going from the site on any given day.

- The proposed 2 vans will not be housed at the proposed property spaces. The vans will be housed at a parking garage using a monthly parking account.
- There is a correction to the number of people for daily use. There will be a maximum of 100 students and 13 staff, pending Office of Childcare approval for the space.

First, will you be the only occupant of the building, or will you be occupying part of the building and other residents or businesses using other parts?

- We will be the only occupants of the building.

Second, it is not clear how many actual children the site will be licensed for and how many staff will be there at one time. We need this information for the report to the Board.

- There will be a maximum of 100 students and 13 staff, pending Office of Childcare approval for the space.

Third, public street spaces cannot be reserved for your exclusive use and the Board of Zoning Appeals has no control over this. This is within the purview of the City Engineer. That leaves the six spaces on the property and those that you propose to use at 20 West Baltimore Street. There is no number stated on how many spaces would be available at 20 West Baltimore. Spaces to accommodate use of the building at 20 West Baltimore Street in accordance with the Zoning Ordinance must be kept available on that property for the use of that property before excess can be reserved for use at 240 South Potomac Street.

- We are not asking for exclusive use of the parking spaces. We wanted to know if the spaces could be used as a loading zone during the hours of 6:30 AM - 9 AM and 3:30 PM - 6:00 PM to minimize the impact on residents. This will not conflict with the current parking restriction for street cleaning.

Fourth, off-site parking CAN be considered to meet parking requirements, but off-site location must be within 500 feet of the target property. The property at 20 West Baltimore is about 650 feet from 240 South Potomac.

This leaves a site with 6 parking spaces serving a use that, by your application, says about 200 people will cycle through the site in a day. A variance to the parking requirements would be necessary and would be sweeping. If your projection of visits is accurate, use of this site and such a large parking variance for such a large day care center would devastate parking in the surrounding area.

If that is the case, I find it hard to believe the Board of Zoning Appeals would be able to grant the special exception.

The legal standard for a special exception is that it is generally considered permitted but is reviewed on a case by case basis to make sure it is no worse at that location than is typical in that zoning district. I think there is strong argument that operating at this location... attached to and surrounded by residential uses, with only 6 parking spaces, IS in fact worse at this location than generally in the RO District. It also doesn't help that the building is so close to residences and you your stated hours of operation begin at 6 am, but that is for the Board to decide.

Please let me know how many children would be cared for at one time, and how many staff would be on site at 1 time so we can calculate your parking requirement and determine whether and how much of a parking variance would be necessary. The requirement would be based on comparable data contained in the Institute of Traffic Engineers Parking Generation Manual, 3rd Edition. I need to know the student and teacher numbers in order to calculate that.

Thank you.
Steve

Stephen R. Bockmiller, AICP
Development Review Planner and Zoning Administrator
Planning and Code Administration Department
City of Hagerstown, Maryland
Room 300, City Hall
1 East Franklin Street
Hagerstown, MD 21740
Phone: 301-739-8577 x 139
Email: sbockmiller@hagerstownmd.org
Department Website: www.hagerstownplanning.org
General City Government Website: www.hagerstownmd.org



Planning and Code Administration Department
Committed to Safety, Dedicated to Partnership and Progress
Follow PCAD on Social Media!



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CITY OF HAGERSTOWN, MARYLAND

Planning & Code Administration Department

One East Franklin Street • Hagerstown, MD 21740

E-mail: planning@hagerstownmd.org

Telephone: 301-739-8577, ext. 138 • Website: www.hagerstownmd.org

MEMORANDUM

TO: Board of Zoning Appeals Members

FROM:  Stephen R. Bockmiller, AICP
Development Review Planner/Zoning Administrator

DATE: November 3, 2022

SUBJECT: Z-2022-09 – Herbert Williams
Administrative Appeal Pertaining to Unimproved Property at 160 South Prospect Street

As required by the Ordinance, herewith I transmit to you the record in the above referenced administrative appeal. Mr. Williams was issued a zoning violation notice by Paul Fulk, Neighborhood Services Manager, for:

1. Parking and storage of camping trailers on a property with no principal permitted use.
2. Operation of a moving company on a property in the RMED (Residential – Medium Density) Zoning District.
3. Making changes to a property located in a historic district without a Certificate of Appropriateness approved by the Historic District Commission (paving a parking area with millings in the vicinity of the rear alley).

The inspection files will be made available to you at the meeting.

The subject property is an unimproved lot (no house) located in the RMED (Residential Medium Density) Zoning District, and it is also located in the Prospect Street Historic District.

All surrounding properties are located in the RMED District, and all surrounding properties – except for those to the east across the rear alley – are located in the Prospect Street Historic District.

Mr. Williams has submitted additional materials mounted on tag board exhibit panels which cannot be copied and included with this mailing, but they will be present at the hearing.

Mr. Fulk will be attending the meeting to stand in defense of the violation notices issued.

Wemoveyou llc

160 S Prospect St

November 03, 2022

To the zoning board of Hagerstown Md.

We purchased 160 S. Prospect vacant lot July 23, 2021. Our intent at the time we purchased the lot at 160 S. Prospect St. was to have a commercial business on our lot. Before we purchased the vacant lot, we informed the realtor of our plans to have a commercial business on the vacant lot. we were then told by the realtor that we were able to do what we please with the vacant lot. Never at no time we were told that the Lot we were purchasing was a non-zoned historical area with limitations on what we can do to or on the vacant lot. No one explained to us that we had to apply for a zoning license for the vacant lot.

Right after we purchased the vacant lot on 160 S. Prospect St., we begin our plans with turning our vacant lot into a commercial business by parking our business trucks, material, and equipment we use to operate our business on our vacant lot. Along with, the commercial business starting we began recruiting workers from Gate Keepers, The Mission, halfway houses, and the reentry program. Trying to give back to the community by providing employment to men that want to get back into working and building their lives back. The alleyway at Holburn Ave. is where we have the new recruiters meet at.

Sixteen months later we am being told that the top of 160 S. Prospect St. is an historic landmark and that the back of 160 S. Prospect St. down at the bottom at the alleyway of Holburn Ave is not historic. Holburn Ave is an alleyway where there are several other commercial businesses along that alleyway as well. Here are some examples of the commercial business along this same alleyway mind sit, (on the left side of 160 S. Prospect St is the women shelter, on the right side is Valley Properties commercial business with an address of 158 S. Prospect St. 156 S. Prospect St. commercial business with equipment in the back of its property. Another example of commercial businesses that sit along this alleyway at Holburn is Wright Gardner. Wright Gardner is located on W. Antietam St., but their parking lot sits behind 128, 124, 122, and 112 S. Prospect St. which is along the alleyway on Holburn Ave. We have recently noticed that the property at 102 S. Prospect St. has commercial work activity going on everyday as well.

What bothers our company is that we've been at this Lot for sixteen months, we are at our lot everyday morning and evening meeting with our employees giving out work assignments. Every day we arrive we must clean up dog and human feces from neighbors walking their dogs, people cutting through our lot using the bathroom. Not one time did we have a neighbor say one thing to either one of us even after we've spoken to them first. Instead, we get funny looks, whispers, and Caucasian neighbors coming onto our lot banging on our equipment yelling we cannot be here while using racial slurs (Debbie) the head of Historic Association. After our encounter with Debbie, we received a phone call from the zoning department. We were told by the gentlemen that we cannot have anything on our Lot.

We then responded by going to the zoning department of Hagerstown in-person speaking with Steve Burkman. Mr. Burkman was rude, unprofessional, and arrogant while explaining that we had to remove our equipment and that we could not have a commercial business on our Lot. Mr. Burkman at that time handed a sheet of paper from



CITY OF HAGERSTOWN, MARYLAND

Planning and Code Administration Department

BOARD OF ZONING APPEALS – ADMINISTRATIVE APPEAL PETITION

Submittal Requirements:

- Original application with original signatures and 9 copies
- Copies of the ruling or notice that is being appealed; failure to do so may result in the petition being dismissed
- 10 copies of all additional supporting information you wish to include
- Filing fee (please consult current fee schedule)

Case No. Z - 2022-09

Office Use Only

Munis #: 20223016

Location of Property: 160 South Prospect St. Hagerstown Md 21740
(Please include street address, if known)

Size of Property (acres/square feet): 0.3898 ac Lot

Applicant's Interest in Property:

Owner (including joint ownership) Other (describe your interest in the property on the lines below and provide the name, address, and telephone number of the owner. Consent of the property owner is not required. If you are appealing a decision rendered regarding a property that you have no direct interest in but the decision affects you in some way (i.e., you are an adjacent property owner that would be affected by the decision being appealed), state this in the space provided below. You may attach an additional sheet.

Applicant's Name: Herbert Williams

Trading As (if applicable): _____ Email: wemoveyourh@gmail.com

Mailing Address: 3164 Vinyard Rd Fallings Water WV 25419

Daytime Telephone: 215-475-7802 Fax: _____

Attorney (legal counsel is not required, but if an attorney will represent you, please complete this section):

Name of Attorney: _____ Email: _____

Mailing Address: _____

Telephone: _____ Fax: _____

Respondent (person or agency whose decision you are appealing): Paul Fulk (Code Official)

Mailing Address: Planning & Code Administration Department 1E Franklin St. Hagerstown Md.

Telephone: 301-739-8577 Fax: 301-791-2650

Email (if available): www.hagerstownmd.org

This Chart for Staff Use Only	Munis #:
Date Accepted for Processing:	Drawing Attached: Yes No
Zoning District:	Posting Deadline:
Assigned Hearing Date:	Opinion Due:

Appeal Request:

Briefly describe the ruling or action from which this appeal is being taken:

I was cited with fines because I parked my business trucks on my lot. Also, I put mulchings down on my lot to prevent growing grass that my neighbors allow their dogs to use the bathroom on.

Date of Ruling or Action: September 02 2020

NOTE: Maryland law and the Zoning Ordinance require that applications in appeals include the grounds on which this appeal will be argued. Failure to complete this section may result in your application being denied.

Brief description of the position of the applicant as to why the decision should be set aside or reversed:

I Herbert Williams owner of We Move You LLC, brought this lot to park my work vehicles on my lot. I also use my lot to meet and interview new hires that I recruit from attending NA & AA meetings trying to give help to guys that's having a tough time getting started. My business help these guys prepare themselves for the new beginning that they are trying to start.

Other factors which the appellant wishes the Board of Zoning Appeals to consider:

When I purchase the ^{lot} property I was not told by the realtor Long Foster (Nicholas Young) that it was ok to park trucks on the lot as I please. I was not given any restrictions about the lot. I never was told the lot was historic and that I had to get special permission to use my lot for my business purpose.

Additional Materials, Fees, Posting, and Advertising:

A. If desired, supplemental pages may be attached to this application.

This original application form and nine (9) copies of this petition must be submitted. If the applicant desires to submit additional materials, pages, etc., ten (10) copies are required. However, additional copies of original photographs and large graphic exhibits are not required. Single copies of original photographs and large graphic exhibits are sufficient. Please do not mount large exhibits to foam core or other rigid backing, as the exhibit can be damaged when removed for placement in the file.

B. The undersigned agrees in matters involving land use, except in administrative appeals where the appellant has no authority to enter onto the property in question, to properly post the property at least ten (10) days immediately prior to the hearing and maintain the poster(s) during the period the property is required to be posted. Failure to comply with this requirement will delay the Board hearing the case.

C. The undersigned agrees to pay all costs in accordance with the current fee schedule adopted by the Mayor and City Council. Checks are to be made payable to the "City of Hagerstown."

Signatures

The undersigned hereby affirms that all of the statements and information contained in, or filed with, this petition are true and correct. The undersigned has read the instructions on this form, filing herewith all of the required accompanying information.

Attorney's Signature (if applicable)



Applicant's Signature

Property Owner's Signature (if other than applicant)

What is an Appeal and what are the Standards Used by the Board to Make a Decision?

An appeal may be filed when an aggrieved party believes the Zoning Administrator (or any other City employee or agency responsible for decisions based on the Zoning Ordinance) made an error in their interpretation or understanding of the Zoning Ordinance. For example, the Zoning Administrator has informed you that you must build your proposed building 20 feet from the property line. You read the ordinance and your understanding of the ordinance is that the building only has to be 15 feet from the property line. You believe the Zoning Administrator made a mistake.

In an appeal, the Board of Zoning Appeals can only determine whether the person or agency whose decision you are appealing made a mistake in reading and understanding the Ordinance. The Board cannot waive the requirements of the Ordinance in an appeal. If the Board determines that the Zoning Administrator read the Ordinance correctly, there was no error. If this determination is made, the Board cannot then say “but we will give it to you anyway.”

Waiving bulk requirements (setbacks, parking, etc.) or requesting a special exception requires a different application with different review and approval standards than what the Board can consider in an appeal alleging a mistake. Filing an appeal (using this application form) cannot be used to obtain a variance, special exception, or other type of review within the purview of the Board of Zoning Appeals. You may obtain the appropriate application forms by contacting the Planning and Code Administration Department.

For more information, please contact:

Hagerstown Planning and Code Administration Department
City of Hagerstown, Maryland
One East Franklin Street, Suite 300
Hagerstown, MD 21740

T: 301.739.8577, ext. 138
F: 301.791.2650

Email: planning@hagerstownmd.org

Last Amended: 4/2016



CITY OF HAGERSTOWN, MARYLAND

Planning & Code Administration Department, 1E. Franklin St., Hagerstown, MD 21740

Phone: 301-739-8577

Fax: 301-791-2650

FORMAL NOTICE OF ZONING VIOLATION

CHAPTER 140 - HAGERSTOWN CITY CODE - LAND MANAGEMENT CODE

September 02, 2022

We Move You Llc
58 Madison Ave
Hagerstown, MD 21740

Case Number: 95999

RE: 160 S Prospect St We Move You LLC Tax Parcel: 03-001229

Dear We Move You Llc:

An inspection of the premises listed above was conducted on September 02, 2022. You are hereby notified that the following violation or violations of the City of Hagerstown's Land Management Code (Chapter 140 of the City Code) exist on the premises and corrective actions are necessary:

Article 4, Section Z. Chart of Permitted and Special Exception Uses.-Uses within a zoning district shall be principal permitted uses, special exception uses or not permitted. Some uses shall also be subject to locational and performance standards based on other applicable requirements.

Specifics: THE CREATION OF AN ACCESSORY USE (ON-SITE PARKING) ON A PROPERTY WITH NO PRINCIPAL USE. PARKING AND STORAGE OF CAMPING TRAILERS ON A PROPERTY WITH NO PRINCIPAL USE. OPERATION OF A BUSINESS (MOVING COMPANY) FROM A PROPERTY IN THE RMED ZONING DISTRICT

Article 4, Section T. Historic District Review.- Before the construction, alteration, reconstruction, relocation, or demolition of any landmark or site or structure within an historic district, if any exteriorwork is involved which would change the exterior appearance of the site or structure, the person, individual, firm, or corporation proposing to make the construction or change shall file an application with the City for a Certificate of Appropriateness or a Certificate of Hardship. The application of paint to previously painted surfaces and the changing of paint colors is exempt from this review process. Any window graphic, as defined in Article 3, whether located on the interior or exterior of the window, shall be subject to this provision.

Specifics: PAVING THE PARCEL WITH MILLINGS FOR PARKING WITHOUT A CERTIFICATE OF APPROPRIATENESS APPROVED BY THE HISTORIC DISTRICT COMMISSION.

CITY OF HAGERSTOWN, MARYLAND
BOARD OF ZONING APPEALS
STAFF REPORT

CASE NUMBER: Z-2022-08 HEARING DATE: November 10, 2022

APPLICANT: Hagerstown Goodwill Industries, Inc. ZONING: IR (Industrial Restricted)

SITE LOCATION: 200 North Prospect Street, north of West Church Street.

REQUEST: Special Exception for a building containing retail and wholesale trade and pawn shops, up to 25% of the total gross square footage of floor area of the building on a single property, and a variance to reduce the required amount of parking on the site to 27 spaces.

DEADLINE FOR WRITTEN DECISION: December 25, 2022

STAFF REPORT (Staff comments in *bold italics*):

1. **Special Exception:**

General Criteria for Special Exceptions (Article 4, Section U.8.a.(1)-(7):

- (a) No special exception shall be approved by the Board of Zoning Appeals until and unless the Board finds in its written order that the application complies with the following criteria:
- (1) **Complete Application and Documentation.** A written application for a special exception is submitted by a person or persons with a financial, contractual, or proprietary interest in the property indicating the section of this ordinance under which the special exception is sought, stating the grounds on which it is requested, and including a concept plan of the proposed use which outlines the specific characteristics of the intended use on that site. *A complete application and exhibit have been filed by the owner of the property.*
 - (2) **Authority to Grant Special Exception and General Standards.** The Board of Zoning Appeals shall make a finding that it is empowered under the section of this ordinance described in the application to grant the special exception and that the granting of the special exception will not materially or adversely affect the adjoining and surrounding properties, if: (a) the characteristics of the use and its operation on the property in question as proposed in the application or concept plan will not create any greater adverse impact than the operation of such a use on any other property with the same zoning; and (b) The proposed activity will comply with all conditions and requirements set forth for the specific use in that zoning district. In making this determination, the Board shall consider, among other things, the impact of the proposed use on neighborhood parking and traffic and whether any proposed activities will create adverse visual, dust, odor, smoke, gas, noise, or similar impact for surrounding properties. *The Board is empowered to consider a special exception request for the desired use in the IR district.*
 - (3) **Conditions of Approval.** In granting any special exception, the Board of Zoning Appeals may prescribe any special conditions in addition to those specified in the Ordinance which it feels are necessary to carry out the intent of this Ordinance and address the issues identified in (b), [2] above, so that protection of adjacent properties, the neighborhood as a whole, and the public interest are ensured. Violation of such conditions and safeguards when made a part of terms under which the special exception is granted shall be deemed a violation of this ordinance and punishable under Article 8, Section B, of this code. *No comment.*

- (4) **Limited to Use Proposed to the Board.** No use or activity permitted by a special exception shall be enlarged or extended beyond the limits authorized in the grant of special exception without approval of the Board. *No Comment.*
- (5) **Change of Special Exception.** Under no circumstances shall the Board of Zoning Appeals grant a variance to allow a use not permitted under the terms of this ordinance in the zone involved or any use expressly or by implication prohibited by the terms of this ordinance in such zone. *Not applicable in this case.*
- (6) **Use Variances or Special Exceptions for Uses Not Enumerated.** Changes from one special exception use to another use permitted by special exception shall require approval by the Board. *Not Applicable in this case.*
- (7) **Special Criteria for this Use.** *None.*

Conditions of Approval. The Board may prescribe appropriate and specific conditions and safeguards, including location, construction, maintenance, and operation in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which a variance is granted, shall be violation of this Ordinance.

Variance Criteria (Article 4, Section U.8.b. – Pages 4-117 through 4-118)

- b. Variances. No variance shall be approved by the Board of Zoning Appeals until and unless the Board, in its written order finds that the application complies with the following criteria: An application has been filed by the contract purchaser, with the consent of the owners of the property.
 - (1) **Unique Condition of Property.** Where by reason of exceptional narrowness, shallowness, shape, topographical conditions, or other unusual situations or conditions peculiar to a specific parcel of property, or of the use of the property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or undue hardship upon, the owner of the property. *The applicant needs to demonstrate to the Board's satisfaction compliance with subsection (1). They cite the existing conditions of the property and their targeting an intended clientele that either lives within walking distance of the facility or otherwise do not have personal transportation of their own and will have no need for parking spaces.*
 - (2) **Minimum Necessary to Afford Relief.** The variance requested is the minimum reasonably necessary to overcome the unusual conditions applicable to the property. *The applicant needs to demonstrate to the Board's satisfaction compliance with subsection (2).*
 - (3) **Compliance Would Preclude Common Use.** That the literal interpretation of the provisions of this Ordinance would deprive the applicant of uses commonly enjoyed by other similar properties in the same district under the terms of this Ordinance. *The applicant needs to demonstrate to the Board's satisfaction compliance with subsection (3).*
 - (4) **No Special Privilege.** That granting the variance will not confer on the applicant any special privilege that is denied by this Ordinance to other lands or structures with the same zoning. *The applicant needs to demonstrate to the Board's satisfaction compliance with subsection (4).*

- (5) **Self-Created Hardship.** No variance shall be granted in any case where the applicant or their agent has created or caused to be created a situation which would or has necessitated the issuance of a variance in order for such property to comply with this Ordinance. *The applicant needs to demonstrate to the Board's satisfaction compliance with subsection (5).*

- (6) **Consistent with the Intent of the Ordinance.** That the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The Board may prescribe appropriate and specific conditions and safeguards, including location, construction, maintenance, and operation in conformity with the Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be a violation of this Ordinance. *The applicant needs to demonstrate to the Board's satisfaction compliance with subsection (6). Given the nature of the site and the intensity of the variances requested, it would seem consideration of conditions to protect surrounding residents and property owners would be appropriate in this case.*

Use Variances Prohibited. Under no circumstances shall the Board of Zoning Appeals grant a variance to allow a use not permissible under the terms of this ordinance in the zone involved or any use expressly or by implication prohibited by the terms of this ordinance in such zone. *This provision does not apply. The use, as described, is enumerated as a special exception use in the IR District, resulting in this application. Since the use is a special exception use enumerated in the Ordinance, this provision regarding "use variances" does not apply in this case, and the Board is within its authority to consider it.*

Recommendations Submitted by Boards, Commissions, and City Departments (Article 4, Section U.6):

- Planning Commission: *Not received at this time.*
- Historic District Commission: *Not received at this time.*
- Board of Traffic and Parking: *Not received at this time.*
- Other *Not received at this time.*

CITY OF HAGERSTOWN, MARYLAND
BOARD OF ZONING APPEALS
STAFF REPORT

CASE NUMBER: Z-2022-08 HEARING DATE: November 10, 2022

APPLICANT: Hagerstown Goodwill Industries, Inc. ZONING: IR (Industrial Restricted)

SITE LOCATION: 200 North Prospect Street, north of West Church Street.

REQUEST: Special Exception for a building containing retail and wholesale trade and pawn shops, up to 25% of the total gross square footage of floor area of the building on a single property, and a variance to reduce the required amount of parking on the site to 27 spaces.

DEADLINE FOR WRITTEN DECISION: December 25, 2022

STAFF REPORT (Staff comments in *bold italics*):

1. **Special Exception:**

General Criteria for Special Exceptions (Article 4, Section U.8.a.(1)-(7):

- (a) No special exception shall be approved by the Board of Zoning Appeals until and unless the Board finds in its written order that the application complies with the following criteria:
- (1) **Complete Application and Documentation.** A written application for a special exception is submitted by a person or persons with a financial, contractual, or proprietary interest in the property indicating the section of this ordinance under which the special exception is sought, stating the grounds on which it is requested, and including a concept plan of the proposed use which outlines the specific characteristics of the intended use on that site. *A complete application and exhibit have been filed by the owner of the property.*
 - (2) **Authority to Grant Special Exception and General Standards.** The Board of Zoning Appeals shall make a finding that it is empowered under the section of this ordinance described in the application to grant the special exception and that the granting of the special exception will not materially or adversely affect the adjoining and surrounding properties, if: (a) the characteristics of the use and its operation on the property in question as proposed in the application or concept plan will not create any greater adverse impact than the operation of such a use on any other property with the same zoning; and (b) The proposed activity will comply with all conditions and requirements set forth for the specific use in that zoning district. In making this determination, the Board shall consider, among other things, the impact of the proposed use on neighborhood parking and traffic and whether any proposed activities will create adverse visual, dust, odor, smoke, gas, noise, or similar impact for surrounding properties. *The Board is empowered to consider a special exception request for the desired use in the IR district.*
 - (3) **Conditions of Approval.** In granting any special exception, the Board of Zoning Appeals may prescribe any special conditions in addition to those specified in the Ordinance which it feels are necessary to carry out the intent of this Ordinance and address the issues identified in (b), [2] above, so that protection of adjacent properties, the neighborhood as a whole, and the public interest are ensured. Violation of such conditions and safeguards when made a part of terms under which the special exception is granted shall be deemed a violation of this ordinance and punishable under Article 8, Section B, of this code. *No comment.*

- (4) **Limited to Use Proposed to the Board.** No use or activity permitted by a special exception shall be enlarged or extended beyond the limits authorized in the grant of special exception without approval of the Board. *No Comment.*
- (5) **Change of Special Exception.** Under no circumstances shall the Board of Zoning Appeals grant a variance to allow a use not permitted under the terms of this ordinance in the zone involved or any use expressly or by implication prohibited by the terms of this ordinance in such zone. *Not applicable in this case.*
- (6) **Use Variances or Special Exceptions for Uses Not Enumerated.** Changes from one special exception use to another use permitted by special exception shall require approval by the Board. *Not Applicable in this case.*
- (7) **Special Criteria for this Use.** *None.*

Conditions of Approval. The Board may prescribe appropriate and specific conditions and safeguards, including location, construction, maintenance, and operation in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which a variance is granted, shall be violation of this Ordinance.

Variance Criteria (Article 4, Section U.8.b. – Pages 4-117 through 4-118)

- b. Variances. No variance shall be approved by the Board of Zoning Appeals until and unless the Board, in its written order finds that the application complies with the following criteria: An application has been filed by the contract purchaser, with the consent of the owners of the property.
 - (1) **Unique Condition of Property.** Where by reason of exceptional narrowness, shallowness, shape, topographical conditions, or other unusual situations or conditions peculiar to a specific parcel of property, or of the use of the property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or undue hardship upon, the owner of the property. *The applicant needs to demonstrate to the Board's satisfaction compliance with subsection (1). They cite the existing conditions of the property and their targeting an intended clientele that either lives within walking distance of the facility or otherwise do not have personal transportation of their own and will have no need for parking spaces.*
 - (2) **Minimum Necessary to Afford Relief.** The variance requested is the minimum reasonably necessary to overcome the unusual conditions applicable to the property. *The applicant needs to demonstrate to the Board's satisfaction compliance with subsection (2).*
 - (3) **Compliance Would Preclude Common Use.** That the literal interpretation of the provisions of this Ordinance would deprive the applicant of uses commonly enjoyed by other similar properties in the same district under the terms of this Ordinance. *The applicant needs to demonstrate to the Board's satisfaction compliance with subsection (3).*
 - (4) **No Special Privilege.** That granting the variance will not confer on the applicant any special privilege that is denied by this Ordinance to other lands or structures with the same zoning. *The applicant needs to demonstrate to the Board's satisfaction compliance with subsection (4).*

- (5) **Self-Created Hardship.** No variance shall be granted in any case where the applicant or their agent has created or caused to be created a situation which would or has necessitated the issuance of a variance in order for such property to comply with this Ordinance. *The applicant needs to demonstrate to the Board's satisfaction compliance with subsection (5).*
- (6) **Consistent with the Intent of the Ordinance.** That the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The Board may prescribe appropriate and specific conditions and safeguards, including location, construction, maintenance, and operation in conformity with the Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be a violation of this Ordinance. *The applicant needs to demonstrate to the Board's satisfaction compliance with subsection (6). Given the nature of the site and the intensity of the variances requested, it would seem consideration of conditions to protect surrounding residents and property owners would be appropriate in this case.*

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Recommendations Submitted by Boards, Commissions, and City Departments (Article 4, Section U.6):

- Planning Commission: *Not received at this time.*
- Historic District Commission: *Not received at this time.*
- Board of Traffic and Parking: *Not received at this time.*
- Other: *Not received at this time.*

CITY OF HAGERSTOWN, MARYLAND
BOARD OF ZONING APPEALS
STAFF REPORT

CASE NUMBER: Z-2022-08 HEARING DATE: November 10, 2022

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 - (2) **Authority to Grant Special Exception and General Standards.** The Board of Zoning Appeals shall make a finding that it is empowered under the section of this ordinance described in the application to grant the special exception and that the granting of the special exception will not materially or adversely affect the adjoining and surrounding properties, if: (a) the characteristics of the use and its operation on the property in question as proposed in the application or concept plan will not create any greater adverse impact than the operation of such a use on any other property with the same zoning; and (b) The proposed activity will comply with all conditions and requirements set forth for the specific use in that zoning district. In making this determination, the Board shall consider, among other things, the impact of the proposed use on neighborhood parking and traffic and whether any proposed activities will create adverse visual, dust, odor, smoke, gas, noise, or similar impact for surrounding properties. *The Board is empowered to consider a special exception request for the desired use in the IR district.*
 - (3) **Conditions of Approval.** In granting any special exception, the Board of Zoning Appeals may prescribe any special conditions in addition to those specified in the Ordinance which it feels are necessary to carry out the intent of this Ordinance and address the issues identified in (b), [2] above, so that protection of adjacent properties, the neighborhood as a whole, and the public interest are ensured. Violation of such conditions and safeguards when made a part of terms under which the special exception is granted shall be deemed a violation of this ordinance and punishable under Article 8, Section B, of this code. *No comment.*

- (4) **Limited to Use Proposed to the Board.** No use or activity permitted by a special exception shall be enlarged or extended beyond the limits authorized in the grant of special exception without approval of the Board. *No Comment.*
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Conditions of Approval. The Board may prescribe appropriate and specific conditions and safeguards, including location, construction, maintenance, and operation in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which a variance is granted, shall be violation of this Ordinance.

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Recommendations Submitted by Boards, Commissions, and City Departments (Article 4, Section U.6):

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