

IN THE MATTER OF : BEFORE THE
DARNESTOWN DEVELOPMENT LLC : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 14-035V
:

DECISION AND ORDER

On January 29, 2015, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Darnestown Development, LLC for a variance to reduce the required 30-foot structure and use setback from a public road right-of-way to three feet for a masonry screen wall in a B-1 (Business: Limited) Zoning District, filed pursuant to Section 130.0.B.2 of the Howard County Zoning Regulations (the "HCZR").

The Petitioner certified to compliance with the notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure. Sang Oh, Esquire, represented the Petitioner. No one appeared in opposition to the petition.

At the outset of the hearing counsel stated Petitioner concurred with the technical staff report (TSR) and would present no additional testimony or evidence.

FINDINGS OF FACT

Based upon the petition and the TSR, the Hearing Examiner finds as follows:

1. Property Identification. The property is located on the northeast side of MD 108 (Waterloo Road) about 60 feet southeast of Montgomery Run Road. It is located in the 1st Election District, officially identified as Tax Map 37, Grid 1, Parcel 286 and known as 5633 MD 108 (Waterloo Road) (the Property).

2. Property Description. The irregularly shaped corner Property is 0.93 acres in size. It fronts about 192 feet on MD 108 and is currently being improved with a day care center.

3. Vicinal Properties. On the Property's southeast side is Parcel 287, a 0.80-acre B-2 zoned lot improved with a gasoline service station and convenience store approved in Board of Appeals Case No. 99-39E&V and Site Development Plan 03-73. To the southwest, across MD 108, the R-20 zoned properties are each improved with a single-family detached dwelling. The R-SA-8 (Residential: Single Attached) zoned Parcel A-1 to the northeast and northwest is a multi-family development. The closest apartment building lies about 140 feet from the Property's northeast property line, with a stormwater management pond located between this building and the Property line. That portion of Parcel A-1 abutting the Property's northwest side is a 42-foot wide, wooded area. Further northwest, across Montgomery Run Road are R-20 (Residential: Single Family) zoned properties improved with single-family detached dwellings.

4. Roads. MD 108 has one northbound travel lane with a designated right-turn lane and one southbound travel lane within a variable width right-of-way (ROW) in the area of the Property. There is a striped median lane between the north-and southbound lanes. According to State Highway Administration data, traffic volume on MD 108 west of MD 104 was 16,230 average daily trips as of 2011.

5. Sight Distance. Sight distance from the existing driveway is about 250 feet to the north and south.

6. Variance Request. Petitioner is seeking a variance from HCZR § 118.0.D.2.b for a six to eight-foot high masonry screen wall along the southerly side of the Property, which adjoins a gasoline service station. Because a 27-foot section of the wall would sit within the 30-foot structure and use setback from a public road right-of-way (MD 108), Petitioner requests a reduction in this setback to three feet. The proposed wall would screen day care students from the improvements on the adjacent gas station site.

7. In Board of Appeals Case No. 12-025V (April 18, 2013), the Hearing Examiner granted Petitioner a variance to reduce a 30-foot structure and use setback to 19 feet upon a finding that the Property is small and irregularly shaped. These physical features have not changed.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.0.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made. Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.0.B.2.a.(1) through (4), and therefore may be granted.

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that

results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2.a.(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the Property is relatively small and irregularly shaped. Given the Property's unique physical conditions, the Hearing Examiner concludes the Property's unique shape and size causes practical difficulties in erecting a conforming wall to screen the students for the permitted child day care center from the improvements on the adjacent gas station site, in accordance with Section 130.0.B.2.a.(1).

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

In Board of Appeals Case No. 99-039E&V, the Board of Appeals approved multiple reductions in required structure and use setbacks for the adjoining gasoline service station, and the vicinal Shipley's Grant development on MD 108 has reduced setbacks, so the proposed reduction in this case for the screening wall will not alter the essential character of the neighborhood in which the lot is located. There is no evidence that the reduction would

substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare, in accordance with Section 130.0.B.2.a.(2).

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The practical difficulties in complying strictly with the structure and use regulations arise from the Property's shape and size and were not created by the Petitioner, in accordance with Section 130.0.B.2.a.(3).

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

The proposed reductions are the minimum needed for the reasonably sized screening wall. Within the intent and purpose of the regulations, then, the variances are the minimum necessary to afford relief, in accordance with Section 130.0.B.2.a.(4).

ORDER

Based upon the foregoing, it is this **6th Day of March 2015** by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the variance petition of Darnestown Development, LLC to reduce the required 30-foot structure and use setback from a public road right-of-way to three feet for a masonry screen wall in a B-1 (Business: Limited) Zoning District, is **GRANTED;**

Provided, however, that:

1. The variance shall apply only to the uses and structures as described in the petition and Variance Plan accepted by DPZ on December 3, 2014, and not to any other activities, uses, structures, or additions on the Property.
2. Petitioner shall obtain all necessary permits.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.