

IN THE MATTER OF	:	BEFORE THE
SSM Hospitality, LLC	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 22-006V

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DECISION AND ORDER

On July 11, 2022, 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 SSM Hospitality, LLC (Petitioner) for (1) a variance to decrease the minimum rear and side yard setback from any residential structure or use from 75 feet to 30 feet, a decrease of 45 feet, and for (2) a variance to decrease the minimum setback from a public right-of-way from 30 feet to 24 feet, a decrease of 6 feet, in the POR (Planned Office Research) Zoning District, filed pursuant to §130.0.B.2 of the Howard County Zoning Regulations (the HCZR) for variances from §115.0.D.3.a. and §115.0.D.3.c .

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. The Petitioner was represented by counsel, Christopher De Carlo, Esq., and Samer Alomer (Engineer) testified in support of the Petition. No one appeared in opposition to the Petition.

Petitioner submitted the following Exhibits:

Exhibit 1. Undated email from Scott Newill (SHA) preferencing the West entrance

Exhibit 2. April 12, 2022 email from Battalion Chief Clancy supporting the revised Variance Plan showing an additional access limited to emergency vehicles only

Exhibit 3. POR Zoning District Comparison Chart for age restricted housing

FINDINGS OF FACT

Based upon the evidence of record, the Hearing Examiner finds as follows:

1. **Property Identification and Description.** The approximately 2.6-acre property is located on the north side of Baltimore National Pike, south of its intersection with the entrance to Patapsco Valley State Park. (The Petition was filed for 2.65 acres but was later amended to remove 0.05 acres which were not part of the subject Parcel) The subject Property lies in the 2nd Election District, is identified as Tax Map 18, Grid 14, Parcel 73, and is known as Brown's Hotel, 8074 Baltimore National Pike, Ellicott City, Maryland (the Property). The Property is rectangular in shape and is relatively flat, rising in elevation from 400 feet in the southwest corner to 436 feet in the northeast corner. It has been developed since the 1940's with the Brown's Hotel.
2. **Adjacent Properties.** Adjacent properties to the north and west are in the R-20 (Residential: Single) Zoning District and are part of Patapsco Valley State Park, to the south is property also in the R-20 Zoning District located in Baltimore National Pike, and to the east are properties in the R-20/ R-ED (Residential: Environmental District) Zoning Districts located in Patapsco State Park/ Baltimore National Pike.
3. **Roads.** Baltimore National Pike has four travel lanes within a 150-foot-wide right-of-way. The speed limit is 45 miles per hour.
4. **Water and Sewer Services.** The Property is within the Metropolitan District and the Planned Service Area for water and sewer.

5. General Plan. The Property is designated Established Community on the Designated Place Types Map of the PlanHoward 2030 General Plan. Baltimore National Pike is an Intermediate Arterial.

6. Zoning History. The Department of Planning and Zoning (DPZ) does not have record of any prior Zoning Petitions pertaining to the Property.

7. The Requested Variances. The Petitioner is proposing to construct a 92-unit age restricted adult housing apartment project which is a permitted use in the POR Zoning District. In order to obtain this density, Petitioner is requesting a reduction in the rear and side yard setbacks from a residential district or use, from 75 feet to 30 feet, a reduction of 45 feet along both side yards and the rear yard setback. §115.0.D.3.a.. Petitioner is also requesting a reduction in the set back from a public street right-of-way, Baltimore National Pike, from 30 feet to 24 feet, a reduction of 6 feet. §115.0.D.3.c..

8. Agency Comments.

State Highway Administration: Per the MDOT SHA Access Manual Section 2.4.2- *In order for the entrances to operate at maximum efficiency, it is recommended that the minimum desirable building setback line be 30' from the right-of-way line or limits of dedication. Building setback lines are subject to the regulations of pertinent local government approving authority. As such, MDOT SHA would prefer to maintain a 30'setback but defers to Howard County to make the final decision. Something for the County to consider when making its determination is that the minimum entrance throat depth for this entrance must be equal to or greater than the entrance radii (in this case, 30'). Impacts to MDOT SHA right-of-way and the traveled portion of US 40 from reduced setback/throat depth and the effects of those on proposed site circulation may require mitigation during the site development plan/MDOT SHA improvement plan phases of engineering and review.*

By undated email from Scott Newill, SHA stated that of the 3 entrance options provided by Petitioner, SHA preferred the West entrance.

Division of Land Development detailed the requirements of the development review process including an Environmental Concept Plan, Site Development Plan, Design Advisory Panel review and adherence to Moderate income Housing Units requirements.

Department of Fire and Rescue Services initially: Recommend denial of this request. Single limited access to a 5 story, 90 plus unit residential building provides a significant choke point for access. Petitioner revised its Variance Plan to incorporate an emergency vehicle only access and by email dated April 12, 2022 Battalion Chief Clancy supported the revised emergency access only Variance Plan.

Resource Conservation Division detailed a portion of the history of Brown's Motel and recommended that the site be fully documented for its history and historical contribution to the County and that it be added to the Maryland Inventory of Historic Properties. This documentation should be done prior to any demolition.

CONCLUSIONS OF LAW

The standards of variances are contained in HCZR Section 130.0.B.2.a. Pursuant to this Section, the Hearing Examiner may grant a variance only if the Petitioner demonstrates compliance with all four variance criteria. Based upon the foregoing Findings of Fact, and for the reasons stated below, the Hearing Examiner finds the requested variance fails to comply with Section 130.0.B.2.a(1) through (4), and therefore must be denied.

- (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.

Compliance with the first criterion is a two-part test. 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).

Petitioner offers what amounts to a case of first impression. The Property is rectangular in shape, relatively flat in topography, is 2.6 acres in size and is surrounded by R-20 Zoned property. It is a pocket of POR Zoned property that perhaps should be rezoned. There are no unique physical conditions including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to this particular lot. Petitioner therefore argues that the Property is unique because (1) it is in the POR Zoning District AND it is (A) surrounded by residential zoning districts (R-20 and R-ED) AND it is (B) relatively small in size (2.6 acres). Petitioner has provided a chart of five (5) POR zoned properties in the County which have been developed with age restricted housing of which two (2) are much larger in size and the remaining three (3) although a little larger, are similar in acreage. None of these properties are adjoining residentially zoned properties and therefore do not have the setback requirements which the subject Property has.

The fact that property is in a zoning district does not render the property unique. All properties in Howard County are in zoning districts. Nor does being in the POR zoning district

render the property unique. The POR zoning district is an established zone in the Howard County table of zoning districts and has been applied to many properties. Inherent in every variance request to modify the bulk regulations for setbacks is the zoning district of adjoining property. It is the zoning of adjacent properties that establishes the set back requirements. Therefore, it is additionally not unique to have adjacent property, as in the instant request, establish the setbacks on the property at issue. The uniqueness that Petitioner is alleging is not unique at all.

The instant variance requests are necessitated by the density being proposed and the type of use. There is no denial of use for the subject Property; reviewing the Use Table for the POR Zoning District provides many permitted uses, and indeed many conditional uses, which could be developed on the subject Property without requiring variances to the extent requested. Even an age restricted adult housing development which is less dense could be developed.

Variance case law dictates that it is the physical characteristics of the property itself which give rise to the approval of a variance. Howard County Zoning Regulations §130.0.B.2.a. embodies that Maryland case law. Here, Petitioner argues that the uniqueness arises from the fact that POR Zoning District properties are usually surrounded by similar zoning districts while in the instant Petition surrounding properties are in residential Zoning Districts. It is not the Property which is physically unique but the zoning of adjacent properties. Petitioner is unable to provide any case on point to support this argument and therefore this is a case of first legal impression,

Petitioner fails to meet its initial burden of proof that the Property has unique physical characteristics giving rise to the need for a variance in accordance with §130.0.B.2.a.(1). By failing to meet the first prong of the variance criteria the variance requests must be denied.

- (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.

Per the comments of SHA, the granting of the variance from the 30-foot setback from a public right-of-way would be detrimental to the public welfare. The side and rear setback variances, if granted, will not alter the essential character of the neighborhood in which the lot is located nor substantially impair the appropriate use or development of adjacent property, in accordance with §130.0.B.2.a.(2). However, since Petitioner could not meet the first prong of the variance test, §130.0.B.2.a.(1), the requested variances cannot be granted.

- (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 difficulty in complying strictly with the bulk regulations governing front, side and rear setbacks is partially created by Petitioners request to potentially overdevelop the 2.6 acre subject Property with a 92 unit age restricted adult housing rental development in violation of § 130.0.B.2.a.(3). Petitioner purchased the Property in 2021. A smaller apartment development or a different use could be developed without the requested variances.

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

The proposed development of 92 age restricted adult rental apartments is potentially an overdevelopment of the subject Property and could be developed on a smaller scale or with a different permitted, or conditional, use and therefore the variances are not the minimum necessary to afford relief, in accordance with Section 130.0.B.2.a.(4).


ORDER

Based upon the foregoing, it is this 13th day of July, 2022, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of LLM Hospitality, LLC for (1) a variance to decrease the minimum rear and side yard setbacks from any residential structure or use from 75 feet to 30 feet, a decrease of 45 feet, and for (2) a variance to decrease the minimum setback from a public right-of-way from 30 feet to 24 feet, a decrease of 6 feet, in a POR (Planned Office Research) Zoning District, at Map 18, Grid 14, Parcel 73, also identified as 8704 Baltimore National Pike, Ellicott City, be and hereby is **DENIED**.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER



Joyce B. Nichols

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.