

IN THE MATTER OF	:	BEFORE THE
JOEUN, INC.	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 09-027V

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### **DECISION AND ORDER**

On October 5, 2009, 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 JOEUN, Inc. for five variances: a variance to reduce the structure and use setback from a public street right-of-way from 30 feet to 23 feet for a structure; a variance to reduce the parking setback from a public street right-of-way from 10 feet up to zero ("0") feet for three parking areas and a drive aisle, and; three variances to reduce the structure and use setback from a residential district other than a public street right-of-way from 30 feet to a minimum of three (3) feet for parking and drive aisles. These variances are requested for a property located in a B-1 (Business: Local) Zoning District, and the petition is filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to compliance with the notice, posting, and advertising requirements of the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Sang Oh, Esquire, represented the property owner. Robert Vogel and Joon Park testified on behalf of the petitioner. Barry Hoover testified in support of the petition. Robert Palmer testified in opposition to the petition.

### **FINDINGS OF FACT**

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property is located in the 2<sup>nd</sup> Election District about 2,100 feet south of MD 100. It is referenced on Tax Map 37, Grid 9, as Parcel 556, and is also known as 6161 Meadowridge Road (MD 103) (the "Property").

2. The L-shaped 1.01-acre Property has about 256 feet of frontage on MD 103. It is about 146 feet deep along the northern lot line and 191 feet deep along the southern lot line. The Property is improved by a 2,861-square foot, two-story building situated about 60 feet from the paving edge of MD 103, about 70 feet from the south lot line and 115 feet from the north lot line. A metal building is attached to the building's southeast rear section. The parking lot in the building's front extends to the road paving and continues around the building. A separate driveway to the south of the building and southern parking area provides shared access to the Site and the residence on adjoining Parcel 461. A frame shed lies in close proximity to the building's southeast corner. Along the Property's rear is a stand of trees. A few trees are scattered along the southern edge and the shared driveway.

3. Vicinal properties. Adjacent properties on the east side of MD 103 are zoned R-SC (Residential: Single Cluster). The 22,106 square-foot Parcel 692 to the east is improved by a single-family detached dwelling lying about 54 feet from the proposed

expanded building. To the south, the 3.44-acre Parcel 461 is improved with a single-family detached dwelling. To the north is Open Space Lot 355 of the Willowwood subdivision. To the west, across MD 103, the R-SA-8 (Residential: Single Attached) zoned properties are improved with the single-family attached dwellings of the Woodland village subdivision.

4. Roads. MD 103 has two travel lanes and about 22 feet of paving within a future 80-foot right-of-way.

5. Water and Sewer Service. The Property is served by public water and sewer.

6. General Plan. The Property is designated Residential Areas on the Policies Map 2000-2020. The Transportation Map depicts MD 103 as a Minor Arterial.

7. Zoning History. In BA Case No. 90-007N, the Board of Appeals confirmed the use of the Property for a nonconforming tavern.

8. The Proposal. The Petitioner is seeking multiple variances to provide parking, a drive aisle, and a 7,545 square foot building within the setbacks to serve an expanded liquor store and carry out business. The first variance would reduce the structure and use setback from a public street right-of-way from 30 feet to 23 feet in order to locate the expanded structure seven feet into the MD 103/Meadowridge Road setback. A second variance would reduce the parking use setback from a public street right-of-way from 10 feet up to zero ("0") feet for parking areas and a drive aisle in the Meadowridge Road setback. Lastly, the Petitioner is requesting three variances to reduce the 30-foot setback from the residentially zoned properties to north, east, and south to a minimum of three (3) feet for parking and drive aisles.

According to the Variance Plan, the Petitioner is required to provide 33 parking space for the liquor store and six spaces for the carryout. Forty spaces are proposed.

9. Robert Vogel testified that the State Highway Administration ("SHA") had vetted the proposed expansion because MD 103 has an "inventory need" for a future 40-foot from centerline right-of way. According to the SHA comments attached to the Technical Staff Report ("TSR"), the agency is agreeable to allowing the existing parking in the future right-of-way until MD 103 is widened, subject to the condition that the future right-of way be dedicated on the county record plat. Mr. Vogel further explained the variances sought for parking spaces in the Property's eastern and southern areas are intended to recover, in part, the loss of the current parking spaces along MD 103 upon its channelization. Should the road improvements be made, the Petitioner would have only one means of access. He also stated that the impact of the setbacks, including the dedicated future right-of-way and the 30-foot structure and use setbacks along three lot lines result in a diminished buildable area.

10. The variance plan notes the following landscape buffers:

- 1) A Type "E" buffer along the southern portion of MD 103 ("Perimeter 1")
- 2) A Type "B" buffer along MD 103 in front of the store ("Perimeter 2")
- 3) A Type "E" buffer along the northern portion of MD 103 ("Perimeter 3")
- 4) A Type "C" buffer along the northern property edge ("Perimeter 4")
- 5) A Type "C" buffer along the eastern property edge ("Perimeter 4")
- 6) A Type "C" buffer along the southern property edge ("Perimeter 4")

11. Concerning the landscaping plan, Mr. Vogel testified that a Type D landscape buffer along the Perimeter 4 edges would provide better screening.

12. Mr. Vogel stated that the use was reasonable and the variances were the minimum necessary. He stated that the building's size is reasonable because it would increase the variety of what retail sales and would make it a more comfortable space through an increase in aisle size. i.e., more functional. He also testified that the second floor is not used.

13. Joon Park testified that his family owned the corporation applying for the variance. The variances are being requested to accommodate aisle access because the stores are too small. The roof will also be repaired.

14. Barry Hoover testified to supporting the petition, subject to the condition that there is a sufficient buffer. He would like to see a fence along the common property line.

15. Robert Palmer testified to being a trustee for his mother, the owner of Parcel 461. He expressed concern about continued use of the right-of-way or driveway through the southern portion of the Petitioner's property. According to the variance petition plan, the right-of-way is part of an access easement.

### **CONCLUSIONS OF LAW**

The standards for variances are contained in Section 130.B.2.a of the Regulations. Pursuant to this section, I 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, I find the requested variance complies with Section 130.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.**

Compliance with this 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).

In this case, the TSR concludes the lot is smaller than many other commercially zoned properties. In addition, because the property is surrounded by residentially zoned property, the Petitioner cannot satisfy the setbacks. Given its size and location, practical difficulties arise in complying strictly with the setback regulation. Consequently, I conclude the Property's size and the location are unique conditions causing the Petitioner practical difficulty in complying with the setback requirements, in accordance with Section 130.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.**

Concerning the Petitioner's demonstration that the variances would not substantially impair the use or development of adjacent property, the testimony and evidence focus on the impact of the requested variances on the residence on the Property's eastern lot line (Parcel 692), which lies about 15 feet at its closest point to the common property line, and on the residence on the Property's southern lot line (Parcel 461), which obtains access through an easement running along what would become a drive aisle in the Property's southern section. To ensure compliance with this requirement, the Petitioner proposes to increase the landscaping to a Type "D" buffer along the eastern and southern property lines and to install fencing.

My primary concern with this petition, however, is whether the Petitioner has adequately shown the granting of the five variances will not alter the essential character of the neighborhood or district in which the lot is located or be detrimental to the public welfare. Due to its relatively small size, 2,861 square feet, the liquor store and restaurant currently have a relatively benign impact on the neighborhood and district. However, the Petitioner is proposing to expand the liquor store to 6,545 square feet, and the carry out, to 1,000 feet. The resulting building and uses would therefore be two and one-half times larger, apparently. Hence, the Petitioner's need for the variances is in part driven by its desire to expand the size and scale of its liquor and carryout businesses. Indeed, the Petitioner will need to appear before the Liquor Board to request a modification of its liquor license to expand the size of the liquor store.

Because the B-1 zoned property is located in a pleasant residential neighborhood with no other commercial uses in the area, the visual impact of the requested variances

for asphalted parking and drive aisles to accommodate this expansion will be pronounced, with the very real potential that the granting of the variances will alter the essential character of the neighborhood until such time as MD 103 is widened and the frontage landscaped. As designed, the Property will be an almost wholly asphalted three-sided parking lot with a large structure generally sited in the middle. The SHA has agreed to allow the Petitioner to continue using the future right-of-way for parking. There are no current plans to improved MD 103. Consequently, for the foreseeable future, then, the Property will be a four-sided parking lot with a large structure generally sited in its center.

It is a truism in planning and land use law that a proposed use is unsuited to a site if it requires multiple variances. In such cases, the reviewing authority has three options: to deny the variances, to reduce the need for the variances, or to impose sufficient conditions on the granting of the variances to ensure the proposed use will not adversely affect the public interest. *See, generally, Dennis Alviani et al. v. Phyllis Dixon et al.*, 365 Md. 95, 775 A.2d 1234 (2001) (citations omitted). Absent evidence in the record that the required landscaping along MD 103 would be installed prior to the road's widening, an uncertain event, I am unable to conclude the Petitioner has met its burden of showing the requested variances would not be detrimental to the public welfare.

Rather than deny the variances or order a reduction in the size of the proposed expansion, the SHA's agreeableness to the continued parking use of the future 40-foot from centerline right-of way provides us with an alternative means to ensure the petition comports with Section 130.B.2.a(2). By Mr. Vogel's testimony, this parking exceeds the

17 spaces to be recovered through the variance petition, i.e., the ten parking spaces encroaching into the southern 30-foot setback, and the seven spaces encroaching into the eastern 30-foot setback. Consequently, there is no current programmatic need for the parking spaces along the southern and eastern property lot lines.<sup>1</sup>

There being no programmatic need for these spaces, I am granting the Petitioner's variance petition subject to two additional conditions. First, the two 18-foot deep areas denoted in the Property's south and east area intended to be used for ten and seven parking spaces, respectively, shall be maintained as grassed and/or landscaped areas—not asphalted or otherwise improved to accommodate parking uses—until such time as SHA widens MD 103.<sup>2</sup> Second, the Site Development Plan and record plat shall contain a note stating that these two areas will not be improved for parking uses until the SHA widens MD 103.

The retention of these areas as grassed/landscaped areas until this widening will mitigate the combined impact of the variances on the neighborhood and have the additional benefit of providing an increased buffer between the uses and the two adjoining residential uses. Subject to these conditions, I conclude the requested variances will not alter the essential character of the neighborhood or district nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.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**

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<sup>1</sup> Indeed, if the SHA does not widen MD 103, the need for the variances for the 17 parking spaces is eliminated.

<sup>2</sup> This condition does not apply to the dumpster.

**are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.**

The Petitioner did not create, in main part, the practical difficulties in complying strictly with the setback regulations, in accordance with Section 130.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.**

Subject to the conditions of approval, the variances are the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

**ORDER**

Based upon the foregoing, it is this **26<sup>th</sup> day of October 2009**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of JOEUN, INC., for: 1) a variance to reduce the structure and use setback from a public street right-of-way from 30 feet to 23 feet for a structure; 2) a variance to reduce the parking setback from a public street right-of-way from 10 feet to zero ("0") feet for three parking areas and a drive aisle, and; 3) three variances to reduce the structure and use setback from a residential district other than a public street right-of-way from 30 feet to a minimum of three (3) feet for parking and drive aisles, are **GRANTED;**

**Provided, however, that:**

1. The variances will apply only to the uses being requested and not to any new structures, uses, or change in uses on the subject property, to any additions thereto.

2. The Petitioner shall install a Type D landscape buffer along the eastern and southern perimeters.

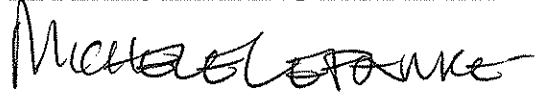
3. The Petitioner shall install solid fencing along the eastern and southern property lines, excepting those areas where a fence would compromise access and/or sight distance. The design and location of this fencing shall be mutually determined by the Petitioner, DPZ, and the adjoining property owners when the Petitioner submits its site development plan.

4. The Petitioner shall maintain the two 18-foot deep areas denoted in the Property's southern and eastern areas as ten and seven parking spaces as grassed and/or

landscaped areas—not asphalted or otherwise improved to accommodate parking uses—until such time as SHA widens MD 103. The Site Development Plan and record plat shall contain a note stating these two areas shall not be improved for parking uses and shall remain as grassed and/or landscaped areas until the State Highway Administration improves MD 103.

5. No part of the current or expanded second story shall be used in connection with the expanded uses.

HOWARD COUNTY BOARD OF  
APPEALS HEARING EXAMINER



Michele L. LeFaivre

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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.