

IN THE MATTER OF : BEFORE THE
CHIPOTLE MEXICAN GRILL, LLC : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
 : HEARING EXAMINER
 : BA Case No. 11-029V

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DECISION AND ORDER

On March 19, 2012, 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 Chipotle Mexican Grill, LLC for four variances for a restaurant in a B-2 (Business: General) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations"). The four requested variances are as follows:

1. A reduction in the 30-foot structure and use setback from the US 40 right-of-way (ROW) to 10 feet (Section 119.D.2.a)
2. A reduction in the 30-foot structure and use setback from St. John's Lane ROW to 17 feet (Section 119.D.2.a)
3. A reduction in the 10-foot parking setback from St. Johns Lane to four feet (Section 119.D.2.b)
4. A reduction in the required number of parking spaces from 40 to 28 (Section 133.D.4.k)

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

The Petitioner was not represented by counsel. Jonathan Bondi testified on behalf of the Petitioner. Rachel Miller and Alison McCune appeared for the hearing and testified, although not in opposition to the petition.

FINDINGS OF FACT

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

1. Property Identification. The property is located at the northwest intersection of US 40 and St. Johns Lane. It is located in the 2nd Election District and is officially identified as Tax Map 24, Grid 4, Parcel 1027, Parcel A-1. The Property is also known as 9120 Baltimore National Pike (US 40) (the Property).

2. Property Description. The irregularly shaped corner Property has about 150 frontage foot on US 40 (the south property line) and 150 frontage feet on St. Johns Lane (the east Property Line). The north property line is about 120 feet in length. The western property line (next to the Shopping Center) runs at an angle from US 40 to the north property line.

The mostly-paved Property is the site of a former gasoline service station building located in the central rear portion and about 45 feet from the north property line. Access from US 40 is open-curb, except for landscaped islands near the frontage center and southeast corner. There are also two access points from St. Johns Lane and inter-parcel access to the adjoining shopping center on the north and west sides.

3. Vicinal Properties. The B-1 (Business: Local) zoned Parcel 1067 adjoins the Property's north and west sides. It is the site of a shopping center located in the northern section and a pad site improved with a bank in the southwest corner. A large parking lot

occupies the front, west, and north portions of the Property's proposed parking lot. Across St. Johns Lane to the east are the B-2 zoned Parcels 446 and 38, which front on US 40. The 0.52-acre Parcel 446 is improved with a bank and bank drive-through lanes. Parcel 38 is improved with a strip-style commercial center. Parcel 39 north of Parcel 446 is improved with a commercial building. Across US 40 to the south, the B-2 properties are improved with various commercial uses, including a gasoline service station.

4. Roads. US 40 has three westbound travel lanes in the Property's vicinity within a 150-foot ROW. According to State Highway Administration data, the traffic volume on US 40 east of Marriottsville Road was 17,502 average daily trips of May 2006. St. Johns Lane has three southbound turn/queuing lanes in the Property's vicinity and one northbound travel lane within a 60-foot ROW. According to Public Works data, the traffic volume on St. Johns Lane north of US 40 is 6,780 average daily trips as of January 2009.

5. Sight Distance. The sight distance is more than 300 feet to the west on US 40, about 120 feet to the east, and more than 100 feet to the west from the right-in/right-out access drive on St. Johns Lane. Visibility from the proposed driveways appears acceptable.

6. Design Review Panel. The Design Review Panel recommended that the building setback be accepted as designed and approval of the proposed parking allotment. The Department of Planning and Zoning (DPZ) endorsed this recommendation.

7. Variance Requests. The Petitioner is intending to raze the existing structure and erect a 2,031-square foot restaurant in the southeastern portion of the Property adjacent to the intersection of US 40 and St. Johns Lane. A 535-square foot seasonal dining patio would be

located in the restaurant's front, along US 40. Owing to the 30-foot structure and use setback from US 40 and St. Johns Lane, the Petitioner is requesting a 17-foot setback from the St. Johns Lane ROW for the restaurant structure and a 10-foot setback from the US 40 ROW for the dining patio.

A 253-square foot enclosed mechanical area, labeled "Overhang" on the Variance Plan, would be located at the rear of the restaurant. To the Overhang's rear is a 15-foot wide-open area, which appears to be a stormwater management area, according to the petition. A five-foot side sidewalk would run behind this open area and connect to the sidewalk along the restaurant's west side and a rear portion of its east side. A six-foot wide sidewalk would run along the Property frontage adjacent to US 40 and a portion of the Property along St. Johns Lane.

Planted areas are depicted on the dining patio's south and east sides and along the restaurant's east side. A landscaped island is depicted in the southwest corner of the Property and a landscape area runs along the Property's west side.

Twenty-eight parking spaces are proposed. Seven would be sited on the restaurant's west side and seven on the north side. Ten spaces are proposed along the western perimeter and four along the northern perimeter. Two spaces encroach four feet into the required setback from St. Johns Lane and one space on the restaurant's north side. As justification for the requested variance from the 40 parking spaces based on square footage (2,031 s.f. for dining/kitchens areas, a 535 s.f. patio and a 253 s.f. covered./screened mechanical area), the Petitioner's parking needs study proposes to use net floor area/net square footage, which DPZ

approved, agreeing with the Petitioner that the proposed NFA (eliminating the mechanical area square footage, and recognizing the seasonal nature of the outdoor patio area) and the "hybrid" nature of the business as partially a carry-out operation and partially a dine-in/fast foot operation, which would require 26 spaces (8 for the carry-out and 18 for the dine-in component). The TSR also puts the Petitioner on notice that it must execute an overflow parking agreement with the shopping center owner if parking cannot be contained on-site.

The proposed development would eliminate two existing ingress/egress points, one each on US 40 and St. Johns Lane.

The Petitioner therefore requests a third variance to reduce the 10-foot parking setback to four feet. A fourth variance is requested to reduce the required number of parking spaces from 40 to 28 based on a parking needs study submitted with the petition.

8. In support of the variances, the petition states the Property is more narrow and shallow than the typical B-2 zoned parcel. It has public road frontage on two sides. The petition emphasizes that the Property's small size, together with the site's width and depths, preclude the proposed use from complying with the major design objectives of the Route 40 Design Manual which recommends locating buildings close to ROW edges, formal street tree plantings and wide sidewalks to encourage pedestrian traffic. Without the structure variances, the restaurant would have to be sited in the Property's rear with parking along US 40 and St. Johns Lane. This layout would reduce the amount of landscaped area outside the ROW from the proposed 23 and 17 feet shown on the Variance Plan to 10 feet. Regarding the requested reduction in the number of parking spaces, the parking needs study relies on a net square

footage of floor area.

9. Jonathan Bondi testified that Chipotle's restaurant operates as a hybrid carryout/dine-in restaurant. Many customers preorder their lunches and dinners electronically so they can pick them up quickly. He has had preliminary conversations with the shopping center owner about a parking space lease agreement. When questioned by Ms. McCune about employee parking, he testified that most Chipotle employees use public transit.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.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.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 narrower and more shallow than area B-2 zoned Properties. The two road frontage setbacks reduce the buildable area. The Property's size and shape, as well as the customary need to provide access from two roads, also reduces the area available for parking.

Importantly, the Petitioner seeks to comply with the Design Manual. As the Technical Staff Report (TSR) nicely explains, Chapter 3 of the Design Manual sets as a design goal for the redevelopment of properties an enhanced site design aesthetic. Chapter 3 therefore encourages utilizing new land development patterns that use land more efficiently and a more mixed-use, pedestrian friendly and human scale character. Key design concepts include buildings oriented closer to streets and parking oriented to the side of rear of buildings.

The lesser setbacks recommended by the Manual, however, conflict with the greater required setbacks of the Zoning Regulations. Although it may theoretically be possible to redesign the proposed restaurant use to fully comply with the Zoning Regulations, the resultant design would conflict with the essential character of the US 40 neighborhood as it is redeveloped, as well as the variance standard set forth in Section 130.B.2.a.(2), that a variance not alter the essential character of the neighborhood or district in which it is located.

Given the Property's unique physical conditions, and considering the application of the Design Manual goals to the Property, the Hearing Examiner concludes that the Property's unique shape and size, as well as the impact of two road frontage setbacks causes practical difficulties in designing the Property to comply with the structure and parking space setback requirements, in accordance with Section 130.B.2.a.(1).

With respect to the requested variance to the required number of parking spaces, the Hearing Examiner agrees with the TSR that the proposed variance to the number of parking spaces is appropriate, given the unique physical constraints imposed on redevelopment by the Property's size, the reduced building envelope and its location along two frontage roads.

(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.

The variances therefore 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, 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 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 setback and parking regulations arise from the Property's shape and size and the recommendations of the Design Manual, and were not created by the Petitioner, 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.

The proposed reductions are the minimum needed for the reasonably sized restaurant. Within the intent and purpose of the regulations, then, 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 29rd Day of March 2012 by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the variance petition of Chipotle Mexican Grill, LLC for variances to reduce the 30-foot structure and use setback to 17 and 10 feet, to reduced the 10-foot parking setback to four feet, and to reduce the number of parking spaces from 40 to 28 in a B-2 Zoning District is **GRANTED**;

Provided, however, that:

1. The variances shall apply only to the uses and structures as described in the petition submitted and as testified to, and not to any other activities, uses, structures, or additions on the Property.
2. All parking must be contained on the Property. If parking overflows onto the adjoining shopping center property, the Petitioner must execute an overflow parking agreement with the shopping center owner.

**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.