

IN THE MATTER OF	:	BEFORE THE
<b>WAVERLY INVESTORS, LLC</b>	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 17-003V

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**DECISION AND ORDER**

On May 25, 2017, 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 Waverly Investors, LLC, for variances to: 1) reduce the 30' external public street right-of-way parking use setback to 19.7' for a paved parking area (4 spaces); 2a) reduce the 100' structure and use setback from a residential district to 8.5' for an ADA access ramp, and; 2b) reduce the 100' structure and use setback from a residential district to 0.7' for a paved storage area, in an M-1 (Manufacturing: Light) Zoning District, filed pursuant to Section 130.0.B.2 of the Howard County Zoning Regulations.

The Petitioner certified to compliance with the advertising and posting requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure. Megan L. Reuwer, Esquire, represented the Petitioner. Joseph Rutter testified on behalf of the Petitioner. No one testified in opposition to the petition.

**FINDINGS OF FACT**

Based upon the evidence presented at the hearing, the Hearing Examiner finds as follows:

1. Property Identification. The subject property is located in the 6<sup>th</sup> Election District on the south side of Lark Brown Road, about 250 feet west of the intersection of Lark Brown Road

and Marie Curie Drive. It is identified as Tax Map 0037, Grid 0019, Parcel 383 and known as 8159 Lark Brown Road (the Property).

2. Property Description. The 0.252-acre (10,977sf) Property is improved with a 1,142sf structure. A driveway partially located on adjacent Parcel E to the west and on the north and west of this structure provides access. This driveway serves the Property exclusively. The Property has about 67 frontage feet on Lark Brown Road, about 200 feet along the western property line and about 70 feet along the southern property line. Topography is generally level.

3. Vicinal Properties. Parcel 382, PAR E to the west and south is zoned NT with an Employment Center Commercial land use designation (as indicated on FDP-240-A-III) and is currently unimproved. PAR F to the east is zoned NT (New Town) with an Apartment land use designation and is currently unimproved. PAR F had been designated as an Employment Center Commercial land use (non-residential use) but was changed to an Apartment land use (residential use) through FDP-240-A02 (January 11, 2013).

4. Zoning History.

BA 14-026V, Waverly Investors, LLC, November 6, 2014. Granted variances to: 1) reduce the 30' external public street right-of-way parking use setback to 19.7' for a paved parking area; 2a) reduce the 100' structure and use setback from a residential district to 11.4' for an ADA accessible access ramp; and 2b) reduce the 100' structure and use setback from a residential district to 17.4' for a proposed parking lot/area.

WP-14-141, 3330 Rogers Avenue, LLC, Waiver granted June 26, 2014 to Section 16.155(a)(I)(ii) of the Land Development and Subdivision Regulations requiring a Site Development Plan for a change in use, unless the Department determines that the change in use will disturb less than 5,000 square feet and will cause no significant alteration to access, parking circulation, or Drainage.

The Variance Requests (§§ 122.0.D.2.a &.c). Petitioner is requesting three variances:

1) § 122.0.D.2.a. A reduction in the 30' external public street right-of-way parking use setback to 19.7' for a paved parking area (4 parking spaces). The petition notes this variance was granted in BA 14-026V for a parking lot constructed subsequently and is included in the variance petition as a precautionary measure.

2a) § 122.0.D.2.c. A reduction in the 100' structure and use setback from a residential district to 8.5' for an ADA access ramp on the east side of the building.

2b) § 122.0.D.2.c. A reduction in the 100' structure and use setback from a residential district to 0.7' for a paved storage area in the east side of the site.

The Petition Supplement states the deteriorated dwelling was replaced by rebuilding the existing foundation.

5. Joseph Rutter testified the property frontage is not a direct line but has some curvature, so the effective width is 55 feet and that due to the 100' residential setback, the entire nonconforming property lies within it. A variance is therefore required for any new addition or use.

#### CONCLUSIONS OF LAW

The standards for variances are contained in HCZR § 130.0.B.2.a of the Regulations. 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 variances comply with §§ 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 130.0.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).

With respect to the first prong of the variance test, the Maryland courts have defined “uniqueness” thus.

In the zoning context, the ‘unique’ aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. ‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to characteristics as unusual architectural aspects and bearing or party walls. *North v. St. Mary’s County*, 99 Md. App. 502, 514, 638 A.2d 1175 (1994) (*italics added*).

In this case, the Property's width—less than 70 feet--affects it disproportionately. The entire lot is subject to the 100-foot structure and use setback and due to the building's location in the center of the lot, there is no reasonable alternative location for the uses. The Hearing

Examiner therefore concludes this physical condition is unique and results in practical difficulties in complying with the structure and use setbacks.

**(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.**

There is no evidence of the requested variances substantially impairing the appropriate use or development of adjacent property and it will not be detrimental to the public welfare. The Variance Plan proposes landscaping along the front and side of the proposed parking area, which will buffer the use. The adjacent property to the east and south and the properties directly across from Lark Brown Road are zoned for commercial use.

**(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 Petitioner did not create the practical difficulties, which arise from the change in land use on Parcel F.

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

The proposed variances are for a reasonable use of the Property and therefore the minimum necessary to afford relief.

**ORDER**

Based upon the foregoing, it is this **10<sup>th</sup> Day of July 2017**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Waverly Investors, LLC, for variances to reduce the 30' external public street right-of-way parking use setback to 19.7' for a paved parking area (4 parking spaces); reduce the 100' structure and use setback from a residential district to 8.5' for an ADA access ramp, and; reduce the 100' structure and use setback from a residential district to 0.7' for a paved storage area in an M-1 (Manufacturing: Light) Zoning District is **GRANTED**;

**Provided, however, that:**

1. The variances shall apply only to the uses and structures as described in the petition as depicted on the Variance Plan and not to any other activities, uses, structures, or additions on the Property.
2. Petitioner shall obtain all required permits.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

  
Michele L. LeFavre

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.