

IN THE MATTER OF	:	BEFORE THE
Blue Crabs Unlimited, Inc.	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 21-034V

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DECISION AND ORDER

On March 3, 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 Blue Crabs Unlimited, Inc (Petitioner) for variances (1) to reduce the structure and use setback from the US Route 1 (Washington Boulevard) right-of-way setback from 30 feet to 0-foot, (2) to reduce the parking uses and fences adjoining parking uses setback from the US Route 1 (Washington Boulevard) right-of-way setback from 30 feet to 0-foot, (3) to reduce the structure and use setback from the Pine Avenue right-of-way setback from 50 feet to 0-foot, and (4) to reduce the parking uses and fences adjoining parking uses from the Pine Avenue right-of-way setback from 30 feet to 0-foot, at Tax Map 38, Grid 13, Parcel 813, Lot Parcel "A", also identified as 6525 Washington Boulevard, Elkridge, in the CE-CLI (Corridor Employment- Continuing Light Industrial Overlay) Zoning District, filed pursuant to Section 130.0.B.2 of the Howard County Zoning Regulations (the HCZR) for variances from Section 127.2.E.4.a and Section 127.2.E.4.b.

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

2. Adjacent Properties. Adjacent properties to the west, south and east are also zoned CE-CLI (Corridor Employment- Continuing Light Industrial Overlay) and are developed with a public library, warehouses and vehicle sales/repair; to the north is zoned B-1 (Business: Local) and is developed commercially.

3. Roads. US Route 1 (Washington Boulevard) has four travel lanes within a variable width right-of-way. The speed limit is 55 miles per hour. Pine Avenue has two travel lanes within a variable width right-of-way. The speed limit is 25 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 Growth and Revitalization on the Designated Place Types Map of the PlanHoward 2030 General Plan.

US Route 1 (Washington Boulevard) is an intermediate Arterial. Pine Avenue is a Local Road.

6. Zoning History. There is no record of any specific Board of Appeals, Zoning Board, or Department of Planning and Zoning cases for the Subject Property.

7. The Requested Variances. In 1995 the Howard County Department of Public Works acquired a fee simple portion of the northeast corner of Parcel 813 for the realignment of Pine Avenue (Deed dated March 27, 1995). This acquisition bisected Parcel 813 and resulted in a 3,682 square foot area (Parcel "A", the Subject Property) that is separated from the remainder of Parcel 813. Parcel "A" is completely encumbered by the setback requirements from the US Route 1 (Washington Boulevard) and Pine Avenue rights-of-way, prohibiting any use of the Subject Property.

Hearing Examiner Rules of Procedure. Brent Merson T/A Blue Crabs Unlimited., Inc (Petitioner) and Carl Gutschick (Petitioner's engineer), testified in support of the Petition. No one appeared in opposition to the Petition.

Petitioner introduced the following exhibits during the hearing:

1. SDAT printout
2. Special Warranty Deed
3. Cover letter to narrative
4. DPZ violation letter and civil citation

FINDINGS OF FACT

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

1. Property Identification and Description. The approximately 0.08-acre (3,682 square feet) property is part of a larger approximately 7.51 property located on the east side of US Route 1 (Washington Boulevard), north of its intersection with relocated Pine Avenue and south of its intersection with Rowenberry Drive. The Subject Property lies in the 1st Election District, is identified as Tax Map 28, Grid 13, Parcel 813, Lot Parcel "A", and is known as 6525 Washington Boulevard, Elkridge, Maryland (the Property).

Parcel "A" is currently being used for a mobile food truck and parking of vehicles. The business has operated at this location since 2012. On March 29, 2021 Petitioner received a Civil Citation for violations of the setback requirements of the Howard County Zoning Regulations (HCZR).

Petitioner Blue Crabs Unlimited, LLC is the lessee of the Subject Property. The Property owner, GPT Washington Boulevard Owner LLC, purchased the Property in 2016 (Special Warranty Deed dated November 22, 2016). GPT Washington Boulevard Owner LLC has acquiesced to and signed the instant Petition for variances.

Petitioner has operated a mobile food truck with a parking area on Parcel "A" since 2012 that is within the required setbacks and is requesting variances to legalize these encroachments.

8. Agency Comments. There are no Department or agency objections to the proposed variances. The Division of Land Development provided the following analysis:

1. The property does not appear to be encumbered with environmental features that would require further review from the Division of Land Development.

2. The Department of Planning and Zoning (DPZ) determined that a Site Development Plan is not required to establish the mobile restaurant in accordance with the DPZ Food Truck policy memo dated December 3, 2018, and Section 16.155(a)(1)(ii) of the Subdivision and Land Development Regulations. After review of this Petition, DLD determined that the temporary use does not exceed 5,000 SF of site disturbance, and does not significantly alter access, parking, circulation, drainage, landscaping, structures or other required site features.

By email dated November 1, 2021, the Design Advisory Panel (DAP) advised Petitioner that DAP review will not be required or necessary as DAP will not be requiring a new or revised Site Development Plan (SDP)

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 variances comply 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.

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).

In 1995, Howard County Department of Public Works acquired a fee simple portion of the northeast corner of Parcel 813 for the realignment of Pine Avenue. This

acquisition resulted in a 3,682 square foot area (Parcel "A", the Subject Property) that is separated from the remainder of Parcel 813. The Subject Property is completely encumbered by the setback requirements from the US Route 1 (Washington Boulevard) and Pine Avenue rights-of-way, which completely prohibits any use of Parcel "A".

The Property is an extremely irregular shape and size, with dimensions from property boundaries which overlap so as to eliminate any building envelope. The Property is entirely surrounded by roadways, US Route 1 (Washington Boulevard), old Pine Avenue, and relocated Pine Avenue. These unique conditions result in practical difficulties and hardships in complying with the bulk regulations of the CE zoning district.

(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.

Parcel 813 is developed with a warehouse distribution center, the property to the east is developed with a vehicle sales/repair business, and a commercial shopping center is located across US Route 1 (Washington Boulevard) to the north. The Subject Property has been used for parking and related uses continuously since 1995, and Petitioner's food truck has operated on-site since 2012, all without any adverse impact on the use or development of adjacent properties.

Food trucks are permitted in the CE zoning district as Carryout Restaurants and are commonly found in commercial/industrial areas where there are limited restaurant options for employees. The food truck is only 216 square feet and is setback 29 feet from US Route 1 (Washington Boulevard). Its existence since 2012 without complaint supports a finding that the food truck is not detrimental to the public welfare.

The variances, if granted, will therefore not alter the essential character of the neighborhood in which the lots are located nor substantially impair the appropriate use or development of adjacent property, nor 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 and hardships in complying strictly with the bulk regulations was created in 1995 with the relocation of Pine Avenue and the bisection of Parcel 813 creating Parcel "A", an unbuildable property. These practical difficulties and hardships were not created by the current property owner, which purchased the Subject Property in 2016. This situation was not created by the Petitioner or by the Property owner, 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 variances sought, (1) to reduce the structure and use setback from the US Route 1 (Washington Boulevard) right-of-way setback from 30 feet to 0-foot, (2) to reduce the parking uses and fences adjoining parking uses setback from the US Route 1 (Washington Boulevard) right-of-way from 30 feet to 0-foot, (3) to reduce the structure and use setback from the Pine Avenue right-of-way setback from 50 feet to 0-foot, and (4) to reduce the parking uses and fences adjoining parking uses from the Pine Avenue right-of-way setback from 30 feet to 0-foot, for the existing food truck and related parking, are the minimum decrease necessary to legalize the existing food truck and related

parking. Within the intent and purpose of the regulations, these 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 7th day of March, 2022, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

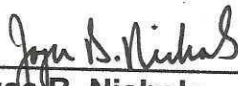
That the Petition of Blue Crabs Unlimited, Inc. for variances (1) to reduce the structure and use setback from the US Route 1 (Washington Boulevard) right-of-way setback from 30 feet to 0-foot, (2) to reduce the parking uses and fences adjoining parking uses setback from the Route 1 (Washington Boulevard) right-of-way from 30 feet to 0-foot, (3) to reduce the structure and use setback from the Pine Avenue right-of-way setback from 50 feet to 0-foot, and (4) to reduce the parking uses and fences adjoining parking uses from the Pine Avenue right-of-way setback from 30 feet to 0-foot, at Tax Map 38, Grid 13, Parcel 813, Lot Parcel "A", identified as 6525 Washington Boulevard, Elkridge, Maryland, in the CE-CLI (Corridor Employment-Continuing Light Industrial Overlay) Zoning District, be and are hereby **GRANTED;**

Provided, however, that:

1. The variances shall apply only to the use as described in the Petition and Variance Plan submitted 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



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.