

IN THE MATTER OF	:	BEFORE THE
1415 WOODSTOCK ROAD, LLC	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 14-003N&V

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DECISION AND ORDER

On October 9, 2014, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the non-conforming use and variance petitions of 1415 Woodstock Road, LLC, to expand an approved non-conforming Tavern Use by adding a 12'x20' deck and associated stairs within the structure and use collector/public street right-of way setbacks in an RC-DEO (Rural Conservation: Density Exchange Option) Zoning District, filed pursuant to Sections 129.0.E and 130.0.B.2 of the Howard County Zoning Regulations (the Zoning Regulations).

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

Jennifer R. Busse and Timothy M. Kotroco, Esquires, represented the Petitioner. Tony Braglio and Paul Sill testified in favor of the petition. No one appeared in opposition to the petition.

Petitioner introduced into evidence the exhibits as follows.

1A&B. Revised Plan and Petition

2.1-7 photographs of tavern and proposed deck area

A Preliminary Matter

At the outset of the hearing, Petitioner introduced into evidence Petitioner's Exhibit 1A&B, an amended petition and conditional use plan (CUP), to add a second variance request in response to a comment in the Addendum to the Technical Staff Report (TSR).¹ The amendment not being substantive, the Hearing Examiner determined they could be introduced into evidence in accordance with Hearing Examiner Rules 9.4 and 9.5.²

FINDINGS OF FACT

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

1. Property Identification. The subject property is located in the 3rd Election District on the east side of Woodstock Road, about 290 feet south of the Patapsco River. It is identified as Tax Map 11, Grid 13, Parcel 25 and known as 1415 Woodstock Road (the Property).

2. Zoning History. The Property is the site of the Woodstock Inn, a restaurant and beverage establishment (the Tavern Use). On March 17, 2014, the Department of Planning and Zoning (DPZ) confirmed a Nonconforming Use for the Tavern Use in NCU 14-001.

3. Property Description. Woodstock Road is a 300-year-old, two-lane rural road running through the "town" of Woodstock, which straddles the Patapsco River, a dividing line between

¹ The (amended) TSR alerts Petitioner on page 2 to the need to include a variance request to reduce the use setback from a public street ROW from 50 feet to 14 feet, per Section 104.0.E.5.

² Under Rule 9.4, when a petitioner proposes to amend a petition during the course of the proceedings, the petitioner must submit the amendment as an exhibit. Rule 9.5 requires the hearing examiner to suspend the hearing for at least three weeks if the amendment is substantive, i.e., the amendment proposes a use that is likely

Howard and Baltimore Counties. On the Baltimore County side, Woodstock Road becomes Old Court Road, once used as a road to the Court at Joppa Town, the county seat of Baltimore County from 1712 to 1768. In the early 1800s, the Baltimore and Ohio Railroad ran tracks along the Patapsco River valley for the Old Main Line, the first commercial line in American railroad history. The rail line continues in active railroading use and is now part of the CSX rail system.

Owing to the river valley's broad walls, modified for railroad track beds and widened by epic hurricanes, the easterly side of Woodstock Road south of the river is steeply pitched. The two-level Woodstock Inn is built into this steep geography, such that the building front is but a few feet from the asphalt bed of Woodstock Road. A stone retaining wall built into the land along this portion of Woodstock Road provides flat terrain for the Inn's rear section and a gravel parking area.

Then came Euclidian zoning, along with state and county road design laws, to which the Tavern Use does not conform, the structure lying wholly within the zoning district's structure and use setback collector/public street rights of way. Having successfully petitioned DPZ for confirmation that the Tavern Use is lawfully nonconforming (presumably predating zoning law in Howard County), Petitioner is now seeking relief from the ROW setbacks to construct a deck addition and associated stairs.

4. The Proposed Expansion and Variances. Petitioner desires to enlarge the area of the confirmed nonconforming use for a 12-foot by 20-foot deck and associated stairs, as may be permitted by Zoning Regulations Section 129.0.E. The enlargement would be constructed on

to impact vicinal properties adversely.

the south side of the building. The petition states the enlargement would not be readily noticeable and will not substantially change the Tavern Use. Because the proposed deck and stairs would be constructed 61 feet from the Woodstock Road ROW, a collector public street, Petitioner is seeking variance approval to reduce the 75-foot collector street public ROW setback for structures to 14 feet. (Zoning Regulations Section 102.0.E.4.b.(1)). Petitioner is also requesting a variance to reduce the 50-foot use setback from a public street ROW imposed by Section 104.0.E.5 for the Tavern Use to 14 feet.

5. Tony Braglio testified to the colorful history of the Tavern Use and its popularity with a broad spectrum of patrons, including motorcyclists, equestrians and hikers. Through Exhibit 2.1-7, he testified the proposed deck was needed for a variety of reasons, including the need to provide an area for smokers who otherwise would have to stand in the ROW. The deck is also needed to accommodate his unique clientele.

CONCLUSIONS OF LAW

I. The Requested Variances (Sections 104.0.E.4.b.(1) & 104.0.E.5)

The standards for variances are contained in Section 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 variance complies 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.

The first criterion for a variance is that there 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 irregular shape and topography impact it disproportionately. The Hearing Examiner therefore concludes these physical conditions are unique and result 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 variance substantially impairing the appropriate use or development of adjacent property and it will not be advantageous to the public welfare.

(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.

(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.

II. The Enlargement of the Nonconforming Use

Pursuant to Section 129.0.E, the Hearing Authority may authorize the extension or enlargement of a nonconforming use or the alteration of a structure containing a nonconforming use, with or without conditions, provided the Petitioner demonstrates compliance with five standards. Based on the testimony and evidence, the Hearing Examiner

concludes the proposed deck addition and associated stairs comply with these standards and is therefore granting the petition.

a. That any changes or additions to the activities taking place in connection with the nonconforming use will not change the use in any substantial way;

The proposed deck is a small outdoor seating area, which would continue the use of the Property as a tavern and not change the use in any substantial way, in conformance with Section 129.0.E.1.a.

b. That an enlargement may not exceed 100 percent of the gross floor area of structures or 100 percent of the gross acreage in the case of nonconforming land, above that which legally existed at the time the use first became nonconforming;

The TSR discusses the zoning definitions of "Gross Floor Area" and "Net Floor Area," which measure calculate "floor area" based on "the sum of the areas of the several floors of the structure(s) as measured by the exterior faces of the walls." Under this regulatory definition, an open deck addition would not add floor area to the building. Were it considered "floor area" under this standard, the 240sf deck is less than ten percent of the 2,607sf Tavern Use building, in conformance with Section 129.0.E.1.b.

c. That the outdoor land area occupied by a nonconforming use may be enlarged only to provide additional parking area;

No additional parking area is proposed. This section is inapplicable.

d. That an enlargement would not cause a violation of the bulk regulations for the zoning district in which the property is located;

This standard is qualified by Zoning Regulations Section 128.0.B.2, which authorizes variances to conforming structures and uses. As set forth in Part 1 of these Conclusions of Law,

Petitioner submitted, and the Hearing Examiner approved, a variance petition to permit encroachment into the structure and use setbacks.

e. That the extension, enlargement or structural alteration would not cause an adverse effect on vicinal properties.

The proposed deck and stairs are well separated and buffered from the northern and western properties. The property across Woodstock Road is a wooded slope. Petitioner owns the southern property, and there is no evidence of adverse impact on this site. The petition complies with 129.0.E.1.e.

ORDER

Based upon the foregoing, it is this **27th Day of October 2014**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the non-conforming use and variance petitions of 1415 Woodstock Road, LLC, to expand an approved non-conforming Tavern Use by adding a 12'x20' deck and associated stairs within the structure and use collector/public street right-of way setbacks in an RC-DEO (Rural Conservation: Density Exchange Option) Zoning District, are **GRANTED**.

Provided, however, that:

1. The Nonconforming Use shall be conducted in conformance with, and shall apply only to the Tavern Use deck and stairs addition as described in the amended petitions and depicted on the Supplemental Plan and not to another activities, uses, or structures on the Property.
2. Petitioner shall obtain all necessary permits.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Michele Letan

Date Mailed: 10-28-14

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 calendar 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.