

IN THE MATTER OF	:	BEFORE THE
<b>JAGDAMBE, LLC</b>	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 13-017V

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**DECISION AND ORDER**

On January 6, 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 petition of Jagdambe, LLC for multiple variances from the structure, use and parking setbacks of three public streets (Route 175, Old Jessup Road and Old Dorsey Road), in relation to the reconstruction/redevelopment of a commercial use (liquor store) destroyed by fire and located in a B-1 (Residential: Single Family) Zoning District, filed pursuant to Section 130.0.B.2 of the Howard County Zoning Regulations (the "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. Sang Oh, Esquire, represented the Petitioner. Robert Vogel testified in support of the petition. No one appeared 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 1<sup>st</sup> Election District on the northeast corner of the Dorsey Run intersection with MD 175. It is identified as Tax Map 43, Grid 21, and Parcel 248 and known as 7915 Waterloo Road (the Property).

2. Property Description. The irregularly shaped, 0.5822-acre corner Property is bounded on three sides by public streets, Route 175, Old Jessup Road and Old Dorsey Road. The original structure, destroyed by fire on September 3, 2012, was sited in the southern area of the Property with a paved parking lot to the west and northwest. From the parking lot, the Property slopes down approximately 16 feet in elevation to the east lot line.

3. Vicinal Properties. Adjacent properties on the east side of MD 175 are zoned M-2 (Manufacturing: General). Parcel 589 to the north is the site of a retail use confirmed as a nonconforming use in BOA Case No. 93-39N&V. To the east is the public street right-of-way for Old Jessup Road and its redeveloped connection with Dorsey Run Road. Across Dorsey Run Road to the south, Parcel 253 is the site of a concrete plant. To the west, across MD 175, the B-1 zoned Parcel 246 is the site of a shopping center.

4. Zoning History. The Property was rezoned to B-1 during the 2013 Comprehensive Zoning Plan. Liquor stores are a permitted use in the B-1 zoning district. In NCU 98-07 (granted November 25, 1998), the Board of Appeal confirmed Petitioner Joseph A. Chung's request for confirmation of a nonconforming use of a commercial building for a liquor store.

5. The Variance Requests (Section 118.0.D.2.a). At the outset of the proceeding, Petitioner amended the Variance Plan to reflect recent design and layout modifications. The variances depicted on the submitted Variance Plan and petition (the subject of the Technical Staff Report (TSR)), are denoted in Column One. Column Two denotes the variance requests as amended. These changes are depicted on Petitioner's Exhibit 1, a marked-up Variance Plan. In the B-1 zoning district, the structure and use setback from a public street is 30 feet and for

parking, 10 feet. The Hearing Examiner has numbered the variance requests for clarity.

**Submitted Structure and Use Variance Requests**

*From Old Jessup Road*

- #1. 11.5 feet for a building
- #2. 13.5 feet for a wall
- #3. 6.3 feet for a trash receptacle

*From Future MD 175 right-of-way (ROW)*

- #4. 4.1 feet for a building
- #5. minus 0.9 feet for a sidewalk

*From Dorsey Run Road ROW*

- #6. 25 feet for a wall
- #7. 26 feet for a trash receptacle enclosure

**Amended Requests**

*From Old Jessup Road*

- #1. 11.5 feet for a building
- #2. 19.0 feet for a wall
- #3. 10.58 feet for a trash receptacle

*From Future MD 175 ROW*

- #4. 4.1 feet for a building
- #5. minus 0.9 feet for a sidewalk

*From Dorsey Run Road ROW*

- #6. 25 feet for a wall x
- #7. 28.5 feet for a trash receptacle enclosure

**Submitted Parking Use Variance Request**

*From Future MD 175 ROW*

- #8. minus 44.07 feet

**Parking Use Variance Request**

*From Future MD 175 ROW*

- #8. minus 44.07 feet

6. Robert Vogel testified that the proposed 4,200-s.f. retail building would be located toward Old Jessup Road, which now provides access to Dorsey Run Road, but will be dead-ended in the future. A controlled access will be provided along MD 175 (Waterloo Road.) He also explained there are no current plans to widen MD 175 in this area.

7. Mr. Vogel further testified to the uniqueness of the B-1 zoned property, which at 0.5822 acres is small for a B-1 zoned property and irregularly shaped. He also testified that the 4500-s.f. size of the proposed structure is reasonable, explaining that from an engineering/development perspective a 10,000-s.f. structure is a typical size for a one-acre parcel.

**CONCLUSIONS OF LAW**

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 eight 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.**

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 irregular shape and small size cause the three public street setbacks to impact it disproportionately. The Hearing Examiner therefore concludes these physical conditions are unique and result in practical difficulties in complying with the structure, use and parking 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.**

Although a request for eight variances may be indicative of an alteration in the essential character of the neighborhood or district in which the lot is located, the Hearing Examiner concludes Petitioner has met its burden that no such change would occur. The Property is located in a commercial neighborhood and bordered by three public streets. There is no evidence of any negative impact on the closest commercial structure, a lawful retail nonconforming use to the Property's north. For these reasons, the Hearing Examiner further concludes the requested variances will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental 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 reconstruction/redevelopment of a retail building and required parking is a reasonable use of the Property. As Mr. Vogel testified, the 4500-s.f. structure is consistent with a 10,000 s.f. typical structure for a one-acre, B-1 zoned parcel.

**ORDER**

Based upon the foregoing, it is this 9<sup>th</sup> day of January 2014, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Jagdambe, LLC for eight variances to reduce the structure, use and parking public street setbacks as follows is **GRANTED**.

From Old Jessup Road: to 11.5 feet for a building, 19.0 feet for a wall, and 10.58 feet for a trash receptacle

From Future MD 175 ROW: to 4.1 feet for a building, minus 0.9 feet for a sidewalk, minus 44.07 feet for parking

From Dorsey Run Road right ROW: to 25 feet for a wall, 28.5 feet for a trash receptacle enclosure

**Provided, however, that:**

1. The variances shall apply only to the uses and structures as described on Petitioner's Exhibit #1 and not to any other activities, uses, structures, or additions on the Property.
2. The 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.