

IN THE MATTER OF : BEFORE THE
DAVID MAUCK T/A NEW IMAGE : HOWARD COUNTY
LANDSCAPING : BOARD OF APPEALS
Petitioner : HEARING EXAMINER
: BA Case No. 17-028V

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DECISION AND ORDER

On October 15, 2018, 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 David Mauck t/a New Image Landscaping (Petitioner) for variances to reduce the public street right-of-way (ROW) setback from 50 feet to 28 feet for a replacement garage and to 20 feet for a roofed storage bin in an M-2 (Manufacturing: Heavy) zoning district, filed pursuant to § 130.0.B.2.a of the Howard County Zoning Regulations (HCZR).

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. Thomas Meachum, Esquire, represented Petitioner. No one appeared in opposition to the petition. David Mauck testified in support of the petition.

Petitioner introduced into the exhibits as follows.

1. Variance plan depicting traffic and delivery truck routes

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 1st Election District and

lies about 250 feet northeast of the Montevideo Road and Dorsey Run Road intersection. It is identified as Tax Map 0043, Grid 0016, Parcel 443, and known as 7531 Montevideo Road.

2. Property Description. The 0.5152-acre Property is improved with a landscape contractor operation consisting of a 982sf office building, a 182sf greenhouse and a 882sf garage. In the northeast corner of the lot is a 26'x26' open mulch pit with a 6-foot high wooden side enclosure. Two curb cuts off Dorsey Run Road lead to a vehicle/equipment gravel area. The Property was once accessed from a pipe driveway off Montevideo Road. After Howard County made the private driveway part of the public Dorsey Run Road, the Petitioner had to reconfigure how large vehicles would enter, circulate within the site, and exit safely.

3. Vicinal Properties. The adjoining M-2 zoned properties are improved with commercial/industrial uses.

4. The Requested Variances (§ 123.0.D.2.a). Petitioner is requesting two variances to reduce the external right-of-way setback from 50 feet to 28 feet for a replacement garage and to 20 feet for a roofed storage bin. The 50-foot setback runs through the center of the Property. The petition includes information from the State Department of Assessments and Taxation Real Property database indicating the smaller size of the Property relative to adjacent lots. These other properties are 1.87, .9119, and 1.0157 acres in size, almost double the size of the subject property. The Petitioner discussed the importance of providing safe truck movement/turning routes in reference to Exhibit 1.

CONCLUSIONS OF LAW

The standards for variances are contained in HCZR § 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 §§ 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. 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. *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).

The .5-acre Property is smaller than neighboring lots and the 50-foot setback runs through the center of the lot, causing practical difficulty in complying with the HCZR, in accordance with § 130.B.2.a(1).

(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 requested variances are for a reduction in the 50-foot public street ROW setback in an old industrial neighborhood where improvements on area properties are as close as or closer than proposed. There is no evidence the requested variances will alter the essential character of the neighborhood or district or impair the use of development of adjacent property. The petition complies with § 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 Petitioner did not create the practical difficulties, in accordance with § 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 proposed variances are for a reasonable use of the Property, in accordance with § 130.0.B.2.a(4).

ORDER

Based upon the foregoing, it is this **31st Day of October 2018**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of David Mauck t/a New Image Landscaping (Petitioner) for variances to reduce the public street right-of-way (ROW) setback from 50 feet to 28 feet for a replacement garage and to 20 feet for a roofed storage bin in an M-2 (Manufacturing: Heavy) zoning district are **GRANTED**;

Provided, however, that:

1. The variances apply to the structures described in the petition and shown on the variance plan.
2. Petitioner shall obtain all required permits.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER



Michele L. LeFavre

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.

In accordance with C.B. 51-2016, § 1 (HCC Sec. 22.902 - Computation of time), if the deadline to appeal is a Saturday, Sunday, or holiday, or if the County offices are not open, the deadline shall be extended to the end of the next open County office business day.