

IN THE MATTER OF : BEFORE THE
EXECUTIVE CENTER PARCEL D, L.P. : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 11-025V

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DECISION AND ORDER

On December 5, 2011, 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 Executive Center Parcel D, L.P. to reduce the 75-foot structure and use setback from residential districts to 50 feet for parking uses in a POR (Planned Office Research) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

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

Samuel Mangione, Esq., represented the Petitioner. Louis Mangione 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, I find as follows:

1. Property Identification. The subject property is located on the western terminus of Carls Court about 320 feet west of North Ridge Road. The subject property is officially identified as Tax Map 24, Grid 6, Parcel 1085, Parcel D and the address is 8910 Carls Court (the Property).

2. Property Description. The 17.12-acre, highly irregularly shaped Property has more than 6 sides. A security fence and gate runs along the Carls Court frontage. The Property's southeastern and central area have been cleared and graded. The Property slopes considerably from this graded area to a wooded stream and wetlands area and then rises in the wooded Forest Conservation area to a sharp triangular point in the northwest corner.

3. Vicinal Properties. The northern POR zoned parcels are the sites of an assisted living facility and a wooded unimproved site. To the east is the R-A-15 (Residential: Apartments) "Adjoining Parcel," which is the subject of SDP 11-052 under review by the Department of Planning and Zoning for a proposed apartment development. The B-2 (Business: General) zoned Parcel B to the south is the site of a large retail building currently being redeveloped. To the west is US 29.

4. Technical Staff Report (TSR) Comments. The TSR notes that the previously approved SDP 06-094, which was previously approved for an age-restricted adult housing development, noted a 50-foot setback. This setback was incorrectly carried forward when the Petitioner abandoned the housing development and proposed an office development on the Property. On SDP 06-094, a line of parking spaces is located within the 75-foot structure and use setback.

5. The Variance Request. The Petitioner is requesting a reduction in the required 75-foot structure and use setback to 50 feet for parking spaces.

6. Louis Mangione testified that the contract purchaser of Adjoining Parcel supports the reduction in setback and introduced into evidence an October 6, 2011 letter to that effect. Petitioner's Exhibit 1. Mr. Mangione also introduced into evidence a copy of SPP 06-094.

Petitioner's Exhibit 2.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.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.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).

In this case, the Property is very irregular in shape with unusual topography and several environmentally sensitive areas. Consequently, the Hearing Examiner concludes the shape of the lot and physical conditions causes the Petitioner practical difficulty in complying with the setback requirements, in accordance with Section 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.

Even with the reduced setback, the landscape buffer between the parking and the Adjoining Parcel D would provide adequate screening. The TSR notes that the closest apartment building would be located about 73 feet from the common property line and about 123 feet from the encroaching parking spaces. The variance therefore will not alter the essential character of the neighborhood in which the lot is located nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.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 in complying strictly with the setback regulation arise from the Property's shape, topography and environmentally sensitive areas were not created by the Petitioner, in accordance with Section 130.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 reduction is the minimum needed for the encroaching parking spaces. Within the intent and purpose of the regulations, then, the variance is the minimum necessary to afford relief, in accordance with Section 130.B.2.a.(4).

ORDER

Based upon the foregoing, it is this **15th Day of December 2011** by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the variance petition of Executive Center, Parcel D, L.P. to reduce the 75-foot structure and use setback from residential districts to 50 feet for parking uses in a POR (Planned Office Research) Zoning District is **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the uses and structures as described in the petition submitted and as testified to, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

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.