

IN THE MATTER OF : BEFORE THE  
WESTMOUNT DEVELOPMENT : HOWARD COUNTY  
Petitioner : BOARD OF APPEALS  
: HEARING EXAMINER  
: BA Case No. 18-001V

.....

**DECISION AND ORDER**

On May 24, 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 Westmount Development (Petitioner) for variances to 1) reduce the 75-foot setback from an external public street right-of-way (ROW) to 14± feet and 4± feet and 2) reduce the 20-foot setback from an internal public street ROW to 10± feet and 4± feet, for two entrance features in an R-ED (Residential: Environmental Development) zoning district, filed pursuant to § 130.0.B.2.a of the Howard County Zoning Regulations (HCZR).

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. Thomas Meachum represented the Petitioner. Jeremy Rutter testified in support of the petition. No one appeared in opposition to the petition.

Petitioner introduced into evidence the following exhibits.

1. Rendering of overall Westmount development
2. Property maps for Westmount
3. Westmount Preliminary Plan

**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 2<sup>nd</sup> Election District. The Petitioner identifies the property as Tax Map 0023, Grids 6 & 12, Parcel 149, with an address of 10551 Frederick Road (at Burton Court) and 10699 Frederick Road (at Westmont Parkway), Ellicott City, Maryland. However, Parcel 149, where the entrance features are proposed to be located is only one portion of an approximately 220+-acre Property being developed as "Westmount," (the Property). According to Site Development Plan SDP 14-008, this larger Property is also identified as Tax Map 0023, Grids 6 & 12.

2. Property Description. The irregularly shaped Property is about ½ mile in length, with the built portion designed close to Frederick Road, away from sensitive environmental areas in the southern section. This section of Frederick Road is a county council designated Scenic Road.

3. Vicinal Properties. Across Frederick Road, the R-20 (Residential: Single Family) zoned properties are improved with a townhouse development, a religious facility, and a single-family detached development. The southern RE-D zoned property is farmed. The eastern R-20 zoned properties are improved with a single-family detached dwelling and an athletic field. The RC-DEO zoned western property is farmed.

4. The Four Variance Requests (§§ 107.0.D.4.a & 107.0.D.4.b(1) (based on the revised March 12, 2018 Variance Plan). Petitioner is proposing to construct two companion entrance features for Westmount Phase I, and between Westmount Parkway to the west and Burton Court to the east. The petition includes elevations of the curved entrance features, which would be constructed of El Dorado stone and contain the development name, "Westmount." A long fence would connect and unify the two entrance features, portions of which would lie lower than the

5-foot high stone piers on each end of the development entrance feature. Because § 107.0.D.4.a imposes a 75-foot setback from an external public street ROW (from Frederick Road), Petitioner is requesting a 14 $\pm$ -foot setback for the western entrance segment at Westmount Parkway and a 4 $\pm$ -foot setback for the eastern entrance segment at Burton Court. Because § 107.0.D.4.b(1) imposes a 20-foot setback from an internal public street ROW, Petitioner is requesting a 10 $\pm$ -foot setback for the western entrance segment at Westmount Parkway and a 4 $\pm$ -foot setback for the eastern entrance segment at Burton Court.

#### **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 petition asserts the location of sewer lines/easements/stormwater management facilities are unique physical conditions. As the *North v. St. Mary's County* court instructs this review, however, “the extent of improvements upon the property” do not constitute unique conditions”: hence, Petitioner's introduction of Exhibit 1 showing the entire Property. Based on Exhibits 1-3, and as found above, the very long and irregular shape of the Property are unique physical conditions causing practical difficulties in complying strictly with the setback regulations, in accordance with HCZR § 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 proposed entrance features to be connected and unified by a continuous fence respects the scenic road. The development itself is a transitional gateway to the rural west and respects the profound historic nature of the lands west of the Westmount development, which itself is designed to be sensitive to the properties of the historic Doughoregan Manor estate and lands, some 500 acres of which were placed in in Howard County's Agricultural Preservation program. There is therefore no evidence of the requested variances altering the essential character of the neighborhood or district or impairing 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, two context-sensitive entrance features along a Scenic Road, in accordance with § 130.0.B.2.a(4).

**ORDER**

Based upon the foregoing, it is this **18<sup>th</sup> Day of June 2018**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of Westmount Development for variances to reduce the 75-foot setback from an external public street right-of-way (ROW) to 14± feet and 4± feet, and to reduce the 20-foot setback from an internal public street ROW to 10± feet and 4± feet, for two entrance features in an R-ED (Residential: Environmental Development) zoning district, are **GRANTED;**

**Provided, however, that:**

1. The variances shall apply only to the uses and structures as described in the petition as depicted on the Variance Plan 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. 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.