

IN THE MATTER OF : BEFORE THE
THIRD GENERATION, LP : HOWARD COUNTY
T/A QUARLES PETROLEUM, INC. : BOARD OF APPEALS
Petitioner : HEARING EXAMINER
: BA Case No. 11-010N&V

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DECISION AND ORDER

On June 13, 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 Third Generation, LP, t/a Quarles Petroleum, Inc., for the confirmation and enlargement of a self-service gasoline service station nonconforming use and a variance to reduce the 50-foot structure and use setback from an external street right of way to 30 feet in a CE-CLI (Corridor Employment-Continuing Light Industrial Overlay) Zoning District, filed pursuant to Sections 129.D and E and 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

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

Sang Oh, Esquire, represented the Petitioner. Robert Vogel testified on behalf of the petitioner. No one appeared in opposition to the petition.

FINDINGS OF FACT

The Hearing Examiner finds as follows:

1. Property Identification. The subject property is situated on the north side of US 1 (Washington Boulevard) about 200 feet southwest of Business Parkway and is known as 7410 Washington Boulevard (the "Property"). The Property is located in the 1st Election District and is identified as Tax Map 43, Grid 5, Parcel 375, Lots 5 & 22.

2. Parcel Description. The 35,000-square foot Property comprises two lots. Lot 5 fronts 100 feet on Southbound US 1 and Lot 22 fronts 100 feet on Roosevelt Boulevard.

The Property is improved with canopy-covered fuel pump islands in the site's central area. The facility is used primarily as a truck fueling facility and is therefore almost entirely paved. To the southeast of the fuel island is a small shed and there is a short retaining wall along the west side. The Property is relatively level.

Two entrances provide access to the Property. The US 1 entrance is centered on the Property. There is a lawn area and six trees on both sides of this entrance. The TSR notes the absence of the 13 shrubs required of the Type E landscape buffer by Site Development Plan (SDP) 86-253. There is also a drainage swale and vegetation on the east lawn area. The Roosevelt Boulevard driveway entrance is located along northeastern property line.

3. Vicinal Properties. Adjoining properties are also zoned CE-CLI. Meadowridge Business Park Parcel Q adjoins the Property's northeast lot line and is improved with a restaurant building by SDP 04-073. Parcel 375, Lots 4 and 21 of the Washington Manor subdivision adjoin the southwest property line and these lots are improved with the Hershey Creamery's storage, warehouse, and distribution buildings. Across Roosevelt Boulevard, Parcel E-2 is an unimproved lot of the Meadowridge Business Park. Further to the west and northwest

are the M-1 (Manufacturing: Light) zoned Parcels E-1 and E-3 of the same business park. Parcel E-1 is improved with a large warehouse building and Parcel E-3 is an Open Space lot. Across US 1, Parcel 63 is improved with the Baltimore-Washington Commerce Park warehouse/office buildings.

4. Roads. US 1 has two southbound travel lanes and a variable paving width within a 150-foot ultimate right-of-way. The posted speed limit is 50 MPH. According to State Highway Administration data, the traffic volume on US 1 south of MD 103 was 25,582 average daily trips. Roosevelt Boulevard has two travel lanes and about 24 feet of paving within a 60-foot ultimate right-of-way. There is no posted speed limit and no available traffic volume data for Roosevelt Boulevard.

5. Water and Sewer Service. The Property is served by public water and sewer.

6. General Plan. The Property is a designated "Employment Area/Redevelopment Corridor" on the 2000 General Plan's 2000-2020 Policies Map. US 1 near the Property is depicted as an Intermediate Arterial/Transit/HOV Corridor on the 2000-2020 Transportation Map.

7. Zoning History.

BA 01-060C. Conditional Use for an alteration to an existing self-service fueling facility for a fuel island canopy approved on April 23, 2002 subject to the condition in relevant part that the US 1 frontage shall also be planted with a Type E landscaping buffer.

BA 97-31 E. Special Exception to expand an existing gasoline service station to include two additional service islands and three additional fuel dispenser approved on September 4, 1997, subject to five conditions.

BA 85-85-35E. Special exception approved for a gasoline service station approved on January 6, 1986, subject to five conditions.

8. Petition to Confirm a Nonconforming Use. The Petitioner is petitioning the Hearing Examiner for confirmation of a gasoline service station, identifying April 14, 2004, the

date on which the Property's zoning changed from M-1 to CE-CLI, as the date the subject use became nonconforming to the use provisions of the Zoning Regulations.

9. Petition to Expand the Nonconforming Use. The proposed expansion is to accommodate three aboveground compressed natural gas storage vessels, two light poles, and a gas meter to provide compressed natural gas. A natural gas dispenser is also proposed to be located in the central area of the existing canopy area. The petition states the existing "gross floor area of structures" comprises 25,266 square feet and that the area of proposed expansion is 1,040 square feet, the area of the 20-foot by 52-foot concrete pad area (the Compound). Based on the existing 25,266 square-foot gross floor area of structures, the petition states the proposed expansion will existing the existing floor area by 4.1 percent.

However, as The Technical Staff Report (TSR) explains, the stated square footage of the existing use appears to include paved and concrete surface areas, driveways, walks and parking surfaces, which are not "structures" for the purposes of Section 129.E.1.b. The TSR calculates the gross floor area of existing structures on the Property based on the 24-foot by 84-foot (2,016 square feet) canopy and the 64-square foot shed, as comprising a total existing structure area of 2,076 square feet. The expansion area of the proposed structures consists of three equipment cabinets (48 square feet), three aboveground storage vessels (each 50 square feet), the gas meter (about 20 square feet) and the shed (64 square feet), for a total expansion area of 378 feet. With the proposed 378 square foot enlargement added to the original 2,076 square foot use area (2,453 square feet), the increase in gross floor area is about 18.2 percent.

10. The Variance Request. The Petitioner is also requesting a variance from Section

127.2.E.4.a.(1) of the Zoning Regulations to reduce the required 50-foot structure and use setback adjacent to Roosevelt Boulevard to 30 feet to accommodate the installation of a concrete pad, storage vessels and associated equipment. The petition states the 35,000 square-foot Property is small for a CE-CLI zoned property and significantly narrow, about 100 feet wide. The Property is subject to potential expansions of Washington and Roosevelt Boulevards, which reduce the available building envelope. The petition states the proposed expansion is necessary to provide reasonable accommodation for compressed natural gas storage, which needs to be stored away from driving paths.

11. Mr. Vogel testified that the Property is smaller than neighboring CE-CLI zoned parcels, referring to the zoning map in the TSR. He further testified that the Property is narrower than the typical CE-CLI zoned properties because the zone was established in part to encourage the consolidation of smaller properties along US 1, which has been occurring. He also explained that vehicles enter the Property from Washington Boulevard and exit from Roosevelt Boulevard.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. Confirmation of Nonconforming Uses (Section 129.D)

A nonconforming use is any lawful existing use, whether of a structure or a tract of land, which does not conform to the use regulations of the zoning district in which it is located, on the effective date of those regulations or because of any subsequent amendment thereto. Such use may be confirmed if it is shown by a preponderance of evidence that the use existed at the

time of the zoning change and has continued uninterrupted since that date. Additionally, Section 129.D requires petitioners to provide the information as follows as part of a petition for confirmation of a nonconforming use:

- a. A statement and plans or other illustrations fully describing the magnitude and extent of the nonconforming use.
- b. A statement identifying the date the use became nonconforming to the use provisions of the Zoning Regulations.
- c. Documentation substantiating the existence of the use on the date it became nonconforming and clearly demonstrating the continued and uninterrupted use or operation thereof from the specified date to the time of filing the application.

In this case, the Petitioner identifies April 14, 2004, the date on which the Property's zoning changed from M-1 to CE-CLI, as the date the subject use became nonconforming to the use provisions of the Zoning Regulations. The record includes the affidavit of Benjamin N. Wafle, President of Third Generation, LP stating the self-service gasoline service station has been in continuous use since Third Generation took ownership in 1993 and copies of property deeds. These documents were submitted with the petition. Supporting this documentation is the zoning history of the Property, three Board of Appeals cases involving the site of an existing fleet fueling facility originally approved in 1985, enlarged in 1997 with the addition of fuel dispensers and fuel islands, and further expanded in 2002 with the addition of a fuel island canopy. The Hearing Examiner concludes the use depicted in the petition and nonconforming use plan submitted by the Petitioner is nonconforming in accordance with Section 129.D.

II. Extension, Enlargement, or Alteration of Nonconforming Uses (Section 129.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:

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 Petitioner proposes to install a concrete pad, storage vessels and equipment for compressed natural gas. The Hearing Examiner concludes the proposed uses will not change the use in any substantial way, in accordance with 129.E.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 Findings of Fact concerning the TSR's corrections regarding the existing gross floor area resulted in a total existing structure area of 2,076 square feet and a proposed 378-square foot enlargement, for an increase of about 18.2 percent of gross floor area of structures, in accordance with Section 129.E.b.

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

Section 129.E.1.c is inapplicable as no additional parking area is proposed.

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

There are no required side setbacks from the adjoining CE-CLI Districts to the east and west. The Petitioner has requested a variance for the proposed encroachment into the

Roosevelt Boulevard setback, as discussed in Part III. Because the Hearing Examiner is granting the variance, the petition accords with Section 129.d.

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

The Gasoline Service Station has been operating on the Property for several decades and the proposed enlargement will only modestly increase the intensity of use. Additionally, the expansion of the use will be next to a public road developed with commercial uses. No additional noise or activities are proposed. The alteration would not cause an adverse effect on vicinal properties, in accordance with Section 129.E.e.

III. The Variance Request (Section 130.B.2)

The standards for variances are contained in Section 130.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, 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 35,000-square foot Property is smaller in overall size and narrower relative to vicinal CE-CLI zoned properties. Additionally, the small Property is burdened by 50-foot structure and use setbacks from two external public streets rights-of-way, with the effect that the size of the building envelope available is reduced for a reasonable and lawful expansion of a nonconforming use. The Petitioner also presented convincing evidence that safety and access drive the location of the proposed site improvements, especially the need to store compressed gas away from driving paths. Based on this evidence, the Hearing Examiner concludes there are unique physical conditions causing the Petitioner practical difficulties 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.

The proposed improvements for the long-operating Gasoline Service Station will only modestly increase the intensity of use. Additionally, the expansion of the use will be next to a public road developed with commercial uses of similar intensity. Based on this evidence, the

Hearing Examiner concludes the variance will not alter the essential character of the neighborhood or district and will not substantially impart the appropriate use or development of adjacent property and will not 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 difficulty or hardship is caused by the Property's size and the impact of two 50-foot structure and use setbacks and 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 variance is the minimum necessary for the proposed improvements, which are reasonable in size, and for public safety, in accordance with Section 130.B.2.a.(4).

ORDER

Based upon the foregoing, it is this **27th day of June 2011**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Third Generation, LP, t/a Quarles Petroleum, Inc., for the confirmation and enlargement of a self-service gasoline service station nonconforming use and a variance to reduce the 50-foot structure and use setback from an external street right of way is hereby **GRANTED**;

Provided, however, that:

1. The Nonconforming Use confirmation applies only to the existing 2,076 square foot Gasoline Service Station Use.
2. The enlargement/expansion shall be no more than 378 square feet.
3. The variance shall apply only to the proposed concrete pad, storage vessels and associated equipment as described in the petition and as depicted on the plan entitled "Plan to Accompany Variance Petition and Expansion of Non-conforming use, Quarles Petroleum, Inc." submitted on April 14, 2011 and not to any new structures or uses on the Property or to any additions thereto.
4. The Petitioner shall install the 13 shrubs required of the Type E landscape buffer by Site Development Plan (SDP) 86-253 prior to commencing the expanded use.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER

Date Mailed: 6/28/11

Michael L. B.

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.