

IN THE MATTER OF : BEFORE THE
PAUL SAIZ : HOWARD COUNTY
 Petitioner : BOARD OF APPEALS
 : BA Case No. 17-011N&V
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DECISION AND ORDER

The Howard County Board of Appeals convened on September 27, 2018 to hear the petition of Paul Saiz, (Petitioner), for variances to reduce the 30-foot use setback from lot lines to 0-feet for parking in an RC-DEO (Rural Conservation: Density Exchange Option Overlay) zoning district, filed pursuant to §130.0.B.2 of the Howard County Zoning Regulations (HCZR).

Board members James Howard, Neveen Kurtum, John Lederer, Steven Hunt and William Santos were present at the hearing and Chairman Howard presided. The Board members indicated that they had viewed the property as required by the zoning regulations. The hearing was advertised, and the property owner was notified of the hearing as required by the Howard County Code. Barry M. Sanders, Assistant County Solicitor, served as legal advisor to the Board.

Thomas Meachum, Esquire, represented the Petitioner. James McNemar and Jose Lopez appeared *pro se* in opposition to the petition.

The case was conducted in accordance with Section 2.209 of the Board’s Rules of Procedure. The following items were incorporated into the record by reference:

1. The Howard County Code;
2. The Howard County Charter;
3. The Howard County Zoning Regulations;

4. The February 12, 2018 Department of Planning and Zoning Technical Staff Report and all responding and reviewing agencies comments;
5. The General Plan for Howard County;
6. The General Plan of Highways;
7. The Residential District Variance Petition submitted by Paul Saiz and materials submitted.
8. The Decision and Order of Howard County Board of Appeals Hearing Examiner in BA Case No. 17-011N&V dated May 3, 2018, in which she granted the enlargement of a confirmed nonconforming restaurant building with conditions and denied a variance request to reduce the 30-foot use setback from lot lines to 0-feet for parking.

Paul Saiz, Ellen Ennis and Martin Marren testified in support of the petition. James McNemar and Jose Lopez testified in opposition to the petition.

As a preliminary matter, during the September 27, 2018 hearing, the Petitioner submitted an amended variance plan dated September 27, 2018 (Petitioner's Exhibit No. 2), requesting variances to reduce the 30-foot use setback from lot lines to 3-feet, 6-feet and 3.6-feet for parking. The Board determined that the changes made to the Plan were not substantive and did not require remand to DPZ for further recommendations.

The Petitioner submitted into evidence the following exhibits:

1. Aerial Photograph of subject property and surrounding properties;
2. Amended Variance Plan dated September 27, 2018;
3. Use Setback Plan dated September 27, 2018; and
4. SDAT Property information for multiple properties, showing acreage.

Opponent Jose Lopez submitted into evidence the following exhibits:

1. Photographs of subject property frontage; and
2. Photographs of water in Jose Lopez's yard.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, the Board makes the following Findings of Fact:

1. The subject property is situated on the north side of Frederick Road (MD 144) approximately 420 feet west of Saint Michaels Road. It is in the 4th Election District and identified as Tax Map 7, Grid 2, Parcel 288, and known as 17004 Frederick road (the "Property").

2. The 0.77-acre parcel is rectangular in shape and is improved with a 2,597 square-foot nonconforming restaurant building. Also, on the Property, behind the restaurant is a 1,750 square-foot dwelling, currently used as an office. The remainder of the Property is a parking lot with 55 spaces and drive aisles.

3. Topography is relatively level and the Property is located at the top of a hill. The restaurant building is at the highest elevation and from this point elevations drops in all directions.

4. Adjoining properties are also similarly zoned RC-DEO and are each improved with a single-family detached dwelling.

5. Frederick Road has two travel lanes and approximately 46 feet of paving within a variable width right-of-way along the front of the Property. The speed limit is 40 miles per hour. The estimated sight distance from the existing entrance is approximately 550 feet to the west and over 700 feet to the east. According to Maryland Department of Transportation data, the traffic

volume on Frederick Road/MD 144 from Carroll County to Watersville Road was 2,210 ADT (annual average daily traffic) as of 2016.

6. The Property is served by private well and septic.

7. The Property is designated Rural Resource on the Designated Place Types Map. Fredrick Road/MD 144 is classified as a Minor Arterial.

8. The Property contains a nonconforming restaurant, confirmed at 2,458 square-feet, with 30 seats and 12 parking spaces through NCU 98-03 on July 6, 1998.

9 Paul Saiz testified in support of the petition and stated he is the owner of the subject Property which he bought in 2016. Mr. Saiz commented that he has lived in Howard County for 20 years and is a contractor by trade. His purpose for the Bolder Restaurant is to have a family-style restaurant for the community to dine. Mr. Saiz said that he has made significant improvements to the Property both inside and outside. Mr. Saiz stated that he was responsible for improvements to the parking areas, fencing and plantings on the Property. Mr. Saiz said that the revised variance plan will provide 51 parking spaces for the restaurant.

10. Ellen Ennis testified in support of the petition and stated that she has been the general manager of the Bolder Restaurant since 2016. Ms. Ennis stated that the Property was in a state of disrepair until Mr. Saiz took over and made improvements to the Property. Ms. Ennis said that the goal of the remodeled family restaurant is to be a part of the neighborhood and attract persons from the community. Ms. Ennis said the parking was chaotic and problematic and that is why the variances are being requested. Ms. Ennis described the Property as long and narrow and smaller than other properties in the neighborhood. Lastly, Ms. Ennis noted that the fencing will shield car lights from neighboring properties.

11. Martin Marren, an architect, testified in support of the petition. Mr. Marren stated that he prepared the Amended Variance plan dated September 27, 2018 (Petitioner's Exhibit No. 2), requesting variances from Section 104.0.E.5 of the Zoning Regulations to reduce the 30-foot use setback from lot lines to 3-feet, 6-feet and 3.6-feet for parking. Mr. Marren stated that the front 4 parking spaces are to be removed. Mr. Marren said the Plan provides for 51 parking spaces on site. Mr. Marren explained that the added landscaping on the site will comply with the Howard County Landscape Manual and noted that the fencing will provide an effective buffer to neighboring properties. Mr. Marren commented that the narrowness and size of the Property compresses the amount of available space that can be used for parking and there is nowhere else available on the "constricted site" to be able to put the parking.

12. Jim McNemar, a nearby property owner, testified that the Petitioner has done a great job improving the Property and trying to mitigate the problematic parking of patrons on the highway. Mr. McNemar said that he wants the Petitioner to succeed but is concerned that the amount of impervious surface created by the many parking spots will lead to rainwater running off into his and other persons yards.

13. Jose Lopez, a next-door neighbor, testified that he has lived in his residence for 18-years and is happy to see the many improvements made to the Property. Mr. Lopez expressed his concerns about trouble seeing when he leaves his driveway with cars parked in the front of the restaurant and water run-off coming onto his property from the restaurant.

CONCLUSIONS OF LAW

The Board's authority in a variance petition hearing is limited to the petition's compliance with the four standards set forth in HCZR §130.0.B.2.a., which gauge the impact of the requested relief from certain bulk regulations, dimensional standards in the applicable zoning

district, such as setbacks, lot coverage and building height.

Pursuant to this HCZR §130.0.B.2.a., the Board may grant a variance if the Petitioner demonstrates compliance with all four variance criteria. Based upon the foregoing Findings of Fact, and for the reasons stated below, the Board finds the requested variance complies with §§130.0.B.2.a(1) through (4), and therefore may be granted, as conditioned.

(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 conditions, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

Compliance with this first criterion is a two-part test. 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).

The Board finds the .77-acre Property is small and narrow in shape. Petitioner Exhibit 4 identifies several immediate neighboring properties larger than Petitioner’s is. As a result, the bulk regulations restrict the available area for the minimally necessary parking and cause practical difficulty in complying with the 30-foot use setback.

(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.

Because the Petitioner amended its Variance Plan to provide for a less-encroaching use setback to accommodate required landscaping, fencing and storm-water management, the Board concludes the granting of the variance would not alter the essential character of the neighborhood or district in which the lot is located, or be detrimental to the public welfare, in accordance 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 or hardships.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

The requested variance for parking is reasonable and as such the Board concludes is the minimum necessary to afford relief.

ORDER

Based upon the foregoing, it is this 10th day of September 2019, by the Howard

County Board of Appeals, **ORDERED:**

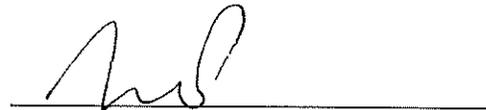
That the amended variance plan dated September 27, 2018 (Petitioner's Exhibit No. 2), requesting variances to reduce the 30-foot use setback from lot lines to 3 feet, 6 feet and 3.6 feet for parking in the RC-DEO (Rural Residential: Density Exchange Option Overlay) zoning district is hereby **GRANTED**, subject to the following condition:

1. The Petitioner shall comply with all applicable Federal, State, and County laws and regulations.

ATTEST:

HOWARD COUNTY BOARD OF APPEALS


Robin Regner, Secretary


James Howard, Chairperson

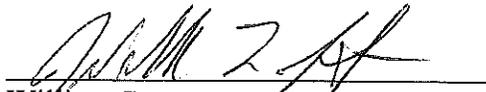

Neeven Kurtum, Vice-Chairperson

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