

IN THE MATTER OF : BEFORE THE  
7410 Grace Drive, LLC : HOWARD COUNTY  
Petitioner : BOARD OF APPEALS  
: HEARING EXAMINER  
: BA Case No. 14-016V

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**DECISION AND ORDER**

On July 14, 2014, 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 7410 Grace Drive, LLC for six variances for a restaurant structure, retaining wall and parking in a POR (Planned Office Research) Zoning District, filed pursuant to Section 130.0.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

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. Sang Oh, Esquire, represented the Petitioner. Robert Vogel and Joan Lancos testified in support of the petition. No one appeared in opposition to the petition.

At the outset of the proceeding, Mr. Oh explained the petitioner had met with the River Hill Village Board and the adjacent property to discuss the development, though no pre-submission meeting was required. He further noted that the development envelope is the same as the religious facility conditional use and variance previously approved.

**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 5<sup>th</sup> Election District on the north side of Grace Drive about 650 feet southwest of Cedar Lane. It is identified as Tax Map 35, Grid 22, Parcel 86 and known as 7410 Grace Drive (the Property).

2. Property Description. The 3.84-acre, irregularly shaped, previously graded and partially improved Property (see Zoning History) lies along a curving portion of Grace Drive. There is an open central area and a series of retaining walls in the northwest corner. The Technical Staff Report (TSR) notes that the public right-of-way (ROW) along the Property frontage is very wide, extending up a graded slope. A wooded area runs along the west lot line and in the southeast corner.

3. Vicinal Properties. The R-ED (Residential: Environmental Development) Parcel 85 to the north is improved with a single-family dwelling located about 130 feet from the Property. The driveway to Parcel 85 runs along the Property's west lot line. Beyond this driveway is Parcel 347, an unimproved pipestem lot owned by the Department of Recreation and Parks. To the northeast and east are the NT (New Town) Open Space Lot 45 and the B-1 (Business: Local) two-building office development (Simpsonville Mill). The Middle Patuxent River runs through the open space lot and to the north of Parcel 81. Across Grace Drive, to the Property's south, is a partially wooded area within the MD 32 ROW.

4. Zoning History. In Board of Appeals Case No. 04-027C&V (February 1, 2005), the Hearing Examiner approved the petitions of Baltimore Korean Seventh-day Adventist Church for a religious facility conditional use and a variance to reduce the 75-foot use setback from an external street public street ROW to zero feet for a proposed parking lot. In the 2013

Comprehensive Zoning Plan, the Property was rezoned to the POR District (Amendment No. 35.004).

5. The Variance Requests (Sections 115.0.D.3 & 115.0.D.3.c). Petitioner is requested the six variances as follows.

- From the northern property line (adjacent to a residential zoning district)
  1. Reduce the 100-foot structure and use setback to 52.56 feet for the proposed building
  2. Reduce the 100-foot structure and use setback to 51.17 feet for parking area
  3. Reduce the 75-foot structure and use setback to 42.90 feet for a proposed retaining wall
- From the western property line (adjacent to a residential zoning district)
  4. Reduce the 100-foot structure and use setback to 78.67 feet for the proposed building
  5. Reduce the 100-foot structure and use setback to 51.46 feet for parking area
- From the southern property line (adjacent to a public-street ROW)
  6. Reduce the 30-foot structure and use setback to 6.97 feet for parking area

6. Robert Vogel, project engineer, testified that proposed landscaping to the north (along the common lot line with residential Parcel 85), includes a six-foot high, open privacy fence (at the request of the Parcel 85 owners) and a Type "C" landscaping buffer. There will be a forest conservation easement on a portion of the north property line and other areas. The variances are the minimum necessary because the Property is constrained by topographical conditions, including significant grades on the west and north (up from Grace Drive) and a reduction in land area caused by a taking for MD 32. The east side grades down. When the 100-foot setback for the restaurant is added to the mix, the buildable area is greatly reduced. These conditions push the buildable portion of the Property to the north. A lot of thought went into the design of the building, including podium parking.

7. Joan Lancos testified to having discussed the religious facility as it was proposed with the Hickory Ridge Community Association. The Board did not oppose the rezoning. She concurs

with the TSR. The proposal makes good sense.

#### CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.0.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, the Hearing Examiner finds the eight requested variances comply with Section 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. Section 130.0.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).

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).

In this case, the Property's irregular shape and topography impact it disproportionately. The Hearing Examiner therefore concludes these physical conditions are unique and result in practical difficulties in complying with the structure, use and parking setbacks.

**(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.**

There is no evidence of the requested variances substantially impairing the appropriate use or development of adjacent property, and their granting will not be detrimental to the public welfare. Proposed landscaping and a forest conservation easement on the north side will ensure the proposed uses will not impair the use of Parcel 85.

**(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.

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

The proposed structure and parking uses are a reasonable use of the Property and therefore the minimum necessary to afford relief.

**ORDER**

Based upon the foregoing, it is this **24<sup>th</sup> day of July 2014**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of 7410 Grace Drive, LLC for six variances for a restaurant structure, retaining wall and parking in a POR (Planned Office Research) zoning district, is **GRANTED**. These variances include:

- From the northern property line (adjacent to a residential zoning district)
  1. A reduction in the 100-foot structure and use setback to 52.56 feet for the proposed building
  2. A reduction in the 100-foot structure and use setback to 51.17 feet for parking area
  3. A reduction in the 75-foot structure and use setback to 42.90 feet for a proposed retaining wall
- From the western property line (adjacent to a residential zoning district)
  4. A reduction in the 100-foot structure and use setback to 78.67 feet for the proposed building
  5. A reduction in the 100-foot structure and use setback to 51.46 feet for parking area
- From the southern property line (adjacent to a public-street ROW)
  6. A reduction in the 30-foot structure and use setback to 6.97 feet for parking area.

**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.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER



Michele L. LeFaivre

Date Mailed: 7/28/14

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 calendar 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.