

IN THE MATTER OF : BEFORE THE  
**HOWARD COUNTY HOUSING** : HOWARD COUNTY  
**COMMISSION** : BOARD OF APPEALS  
Petitioner : HEARING EXAMINER  
: BA Case No. 16-007V

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**DECISION AND ORDER**

On May 23, 2016, 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 the Howard County Housing Commission for a variance to reduce the 20-foot structure and use setback to 1.40' for a retaining wall in an R-A-15 (Residential-Apartments) Zoning District, filed pursuant to § 130.B.2 of the Howard County Zoning Regulations (HCZR).

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

Andrew Robinson, Esquire, represented the Petitioner. No one appeared to testify in opposition to the petition.

At the outset of the hearing, Petitioner stated the petition and plan included all information relevant to the standards for granting the variance and would present no evidence.

**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 south side of Court

House Drive about 820 feet southeast of Ellicott Mills Drive. It lies in the 2nd Election District and is identified as Tax Map 25, Grid 0007, Parcel 10 (the Property). The Property is also known as 3570 Court House Drive.

2. General Property Description. The Howard County Housing Commission-owned, 3.93-acre, irregularly-shaped Property is the site of a multi-phase redevelopment of the multi-family Burgess Mill Station community. The Property will be redeveloped under Phase II of the redevelopment for garden-style apartments with associated parking and amenities. Two existing means of ingress/egress, the first at Court House Drive and the second at Fels Lane, will serve the redevelopment. The Property slopes significantly from east to west and from north to south, with steep slopes along the western and southwestern perimeters, with a portion of these steep slopes located along the west side of the existing drive entrance off Court House Drive into the northerly portion of the Property in an area of steep slopes. There is a moderate slope along the northern perimeter adjoining the Parcel 121 commercial POR development (Planned Office Research).

3. Adjacent Properties. The POR zoned Parcel 320 to the north across Court House Drive is mostly wooded except for a parking lot and communications tower in its northwestern area. Parcel 43 to the southeast is zoned R-A-15 and is the site of an apartment complex. Parcel 205, also to the southeast, is zoned R-VH (Residential: Village Housing) is improved with a single-family detached dwelling. Properties to the south and southwest, across Fels Lane, are zoned R-VH and are each improved with a single-family detached dwelling fronting on Fels Lane. The northwestern POR-zoned Parcel 121 is the site of an office development.

4. The Requested Variance. Petitioner is proposing to redevelop the Property with three-story garden apartments (60 units) with associated parking and amenities. Because Petitioner is proposing to extend the drive aisle from Fels Lane into the interior of the site in an area of moderate slopes along the common lot line with Parcel 121, Petitioner is requesting a variance from HCZR § 112.0.D.4.c to reduce the 20-foot structure and use setback to 1.40 feet for a retaining wall. The proposed retaining wall would be about 159 feet in length, with a wall height ranging 0.5 feet to 12.25 feet above grade, as shown on the Variance Plan.

#### **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. 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).

In this case, the Property has an irregular "boot" shape and exceptional topography, including steep slopes. All these conditions greatly reduce the resultant building envelope. The Property's irregular shape, topography and other physical features are unique physical conditions causing the Petitioner practical difficulties in complying with the setback requirements, in accordance with § 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 redevelopment, a mix of garden apartments, are similar to those in the neighborhood, community or district in which the lot is located. As the variance petition shows, the redevelopment will be well landscaped and feature multiple amenities. The variance will therefore 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 § 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 regulations arise from existing topography, in accordance with § 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 requested variance for a 159-foot retaining wall with a wall height ranging 0.5 feet to 12.25 feet above grade is a reasonable use of the Property and its location, length and height is dictated by existing topography. Within the intent and purpose of the regulations, then, the variance is the minimum necessary to afford relief, in accordance with § 130.B.2.a.(4).

ORDER

Based upon the foregoing, it is this **16<sup>th</sup> Day of June 2016**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Howard County Housing Commission for a variance to reduce the 20-foot structure and use setback to 1.40' for a retaining wall in an R-A-15 (Residential-Apartments) 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 shown on the variance plan, not to any other activities, uses, structures, or additions on the Property.
2. Petitioner shall obtain all 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 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.