

IN THE MATTER OF	:	BEFORE THE
<b>FORT KNOX COLUMBIA</b>	:	HOWARD COUNTY
<b>SELF STORAGE, LLC</b>	:	BOARD OF APPEALS
Petitioner	:	BA Case No. 19-006V

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### **DECISION AND ORDER**

The Howard County Board of Appeals convened on July 22, 2019 to hear the amended petition of the Fort Knox Columbia Self Storage, LLC (Petitioner), for a variance to reduce the required 30-foot parking setback from an external public street right-of-way to 0-feet in a M-1 (Manufacturing: Light)/NT (New Town) zoning district, filed pursuant to §130.0.B.2 of the Howard County Zoning Regulations (HCZR).

Board members James Howard, Neveen Kurtom, John Lederer and Steven Hunt 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 Petitioner certified to compliance with the notice, posting and advertising requirements of the Howard County Code. Barry M. Sanders, Assistant County Solicitor, served as legal advisor to the Board. The Petitioner was represented by counsel Thomas G. Coale.

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 July 8, 2019 Department of Planning and Zoning (“DPZ”) Technical Staff Report and reviewing agencies comments (“TSR”);
5. Aerial photograph of the vicinity;
6. The General Plan for Howard County;
7. The General Plan of Highways; and
8. The Non-Residential District Variance Petition and Plan submitted by the Fort Knox Columbia Self Storage, LLC.

Mark Halpin and Rick Moran testified in support of the petition. Brian England and Chris Alleva testified in opposition to the petition.

#### FINDINGS OF FACT

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

1. The subject property is identified as Tax Map 42, Grid 9, Parcel 386. The address of the subject property is 9597 Berger Road, Columbia, Maryland 21046 (the “Property”).
2. The 6.12-acre Property is in the M-1 (Manufacturing: Light) and NT (New Town) zoning districts.
3. The Property is located on the southeast side of Berger Road at the end of a cul-de-sac and contains a self-storage facility. The TSR indicates that the shape is slightly irregular and ranges from 550 feet in width to 400 feet due to the angled right-of-way of Berger Road. The Property’s topography is relatively flat and rises from an elevation of 300 feet near the south property line to an elevation of 314 feet at the Berger Road frontage. The TSR also depicts lots in the surrounding area as being irregular in shape and of differing sizes.

3. The Petitioner requests a variance from Section 122.0.D.2.a. of the Zoning Regulations to reduce the required 30-foot parking setback from an external public street right-of-way to 0 feet for an existing parking area constructed without approval.

4. The written justification for the variance states that the Property has two unique features that create practical difficulties in complying strictly with the parking setback. First, there are steep grade changes facilitating two storm-water management ponds on both the north and south sides of the Property and secondly, that the Property is irregularly shaped.

5. Vicinal properties include the following: to the north and west are NT zoned commercial and warehouse uses; to the south is M-1 zoned MD 32; and to the east is NT zoned warehousing.

6. Berger Road, classified as a Local Road, has two travel lanes within an 80-foot right-of-way and approximately 44 feet of pavement. The speed limit is 25 miles per hour.

7. The Property is within the Metropolitan District and the Planned Service Area for water and sewer.

8. The Property is a designated Established Community on Designated Place Types Map of the PlanHoward2030 General Plan.

9. Mark Halpin, project manager with Greenman-Pedersen, Inc., testified that the function of the variance request is to provide parking for truck rental vehicles to be able to park on the Property when returning vehicles after hours instead of parking them on the street. Mr. Halpin stated that the Property is split-zoned with the M-1 zoning in the front along Berger Road and NT zoning in the rear. Mr. Halpin said that the M-1 property is subject to the 30 foot parking setback requirement and that the surrounding NT zoned properties are not subject to the

30 foot parking setback requirement. Mr. Halpin added that the character of the neighborhood would improve by getting vehicles off the street.

10. Rick Moran, an owner of the subject Property, testified that he has a U-Haul/Self Storage franchise on the Property and that the variance would be a solution to his company utilizing off-street parking. Mr. Moran said that he would like to accommodate more parking on site and the parking area would provide parking for 20 trucks. The Board notes that the Variance Petition states that the parking area is for approximately 13 Box Truck Spaces. The TSR states that the storage use complies with the off-street parking requirement of four spaces as approved in SDP-89-257 and that the Petition does not explain why additional spaces are needed to support the use. The TSR further states that additional area exists in the east corner of the site that could accommodate parking.

11. Brian England, managing partner of nearby British American Auto at 9577 Berger Road testified that the Petitioner has been running a business on the road which should not be allowed since it is against the regulations and covenants of the industrial park guidelines. Lastly, Mr. England said he supports DPZ's TSR decision to deny the requested variance.

12. Chris Alleva, testified in opposition to the variance request. Mr. Alleva stated that a split-zoned property is not unique or unusual. Mr. Alleva commented that both Atholton Shopping Center and Mr. England's properties are split-zoned. Mr. Alleva stated that the Petitioner needs to amend their SDP and get a waiver for this parking proposal.

#### 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 and dimensional standards in the applicable

zoning district such as setbacks, lot coverage and building height. Pursuant to HCZR §130.0.B.2.a., the Board may grant a variance only if the Petitioner demonstrates compliance with all four variance criteria.

(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.

(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.

(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.

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

For the reasons stated below, the Board finds that the requested variance does not comply with Section 130.0.B.2.a(1) and therefore must be denied.

2. 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.(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” thusly:

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 Petitioner has not shown that the Property is in any way unique such that the use setback of Section 122.0.D.2.a. will disproportionately impact it. The unique physical conditions asserted by the Petitioner is the intertwined combination of irregular shape, existence of storm-management facilities and that the Property is split-zoned. The Board disagrees and finds that the shape, existing stormwater facilities and zoning of the Property are not unique physical characteristics of the Property. As stated in *North*, “uniqueness” does not refer to the extent of the improvements upon the property – so that the location of the existing stormwater management facilities and existing self-storage buildings restricting the buildable/useable area on the land is not cause for a variance. The slightly irregularly shaped 6.12-acre Property has flat topography and additional area in the east corner that could accommodate parking.

Unique physical characteristics of the property, not the desires of, or conditions personal to the applicant, must prevent the applicant from developing in compliance with the zoning

ordinance. Moreover, the Property is not constrained by steep slopes, wetlands, parcel shape or size or other environmental factors that limits the reasonable use of the Property.

Unless there is a finding that the property is unique, unusual, or different, the process stops here, and the variance is denied without any consideration of practical difficulty or unreasonable hardship. *Cromwell*, 102 MD. App. At 694-695, 651 A.2d at 426. In this case, the Petitioner has not produced sufficient evidence to pass the first prong of the variance test; that is, it has not shown that the Property has unusual or unique characteristics that cause the use setback restriction to disproportionately impact upon it. For this reason, the variance request fails to comply with Section 130.B.2.a(1).

**ORDER**

Based upon the foregoing, it is this 31<sup>ST</sup> day of DECEMBER, 2019, by the Howard County Board of Appeals, **ORDERED:**

That the amended petition of the Fort Knox Columbia Self Storage, LLC (Petitioner), for a variance to reduce the required 30-foot parking setback from an external public street right-of-way to 0 feet in a M-1 (Manufacturing: Light)/NT (New Town) zoning district is hereby **DENIED.**


**ATTEST:**

  
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Robin Regner, Secretary

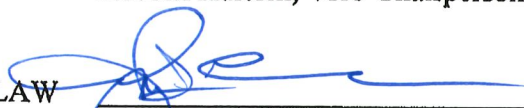
**HOWARD COUNTY BOARD OF APPEALS**


  
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James Howard, Chairperson

James Howard  
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Did Not Participate \_\_\_\_\_  
William Santos



