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|---------------------------------|---|---------------------|
| IN THE MATTER OF                | : | BEFORE THE          |
| <b>YMCA OF CENTRAL MARYLAND</b> | : | HOWARD COUNTY       |
| Petitioner                      | : | BOARD OF APPEALS    |
|                                 | : | HEARING EXAMINER    |
|                                 | : | BA Case No. 15-004V |

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**DECISION AND ORDER**

On March 16, 2015, 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 YMCA of Central Maryland for a variance to reduce the required structure and use setback from an adjoining R-A-15 (Residential: Apartments) zoned property from 75 feet to 13.11 feet for parking spaces in an R-SA-8-I (Residential: Single Attached) zoning district with an "I" (Institutional) overlay, filed pursuant to Section 130.0.B.2 of the Howard County 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. Jennifer R. Busse, Esquire, represented the petitioner. Robert Vogel testified in support of the petition. No one appeared in opposition to the petition.

Petitioner introduced into evidence the exhibits as follows.

1. Topography map depicting variance area
2. Variance plan – marked up to show variance area and proposed landscaping

**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 2<sup>nd</sup> Election District on

the northwest corner of the MD 103 intersection with Long Gate Parkway. It is identified as Tax Map 24, Grid 24, Parcel 767, Lots 45 and 46 and known as 4331 Montgomery Road (MD 103) (the Property).

2. Property Description. The 4.64-acre irregularly shaped Property is the site of a YMCA facility. The large facility is located in the central portion of the site and surrounded by parking aisles and parking spaces. There is also an intermittent stream, wetlands and vegetative buffer in the northern portion of the site.

3. Vicinal Properties. To the northwest, the R-A-15 properties are improved with residences and a religious facility. To the northeast, the R-SC-I (Residential: Single Cluster with an "I" overlay) zoned property is the site of the Howard County Northeastern (the Veterans) Elementary School. The R-20 (Residential: Single Family) properties to the southeast are generally improved with single-family detached dwellings. Across Montgomery Road to the southwest, is the Long Gate Shopping Center.

4. Zoning History. The Technical Staff Report (TSR) discusses the zoning history of the Property. The Property has always been zoned residential. During the 2003 Comprehensive Zoning Plan, the County Council created the "I" District and "placed" it on the Property and the adjoining property to the north. The I-District imposes a 75-foot structure and use setback from residential districts.

5. The Variance Request (§ 113.3.E.2.a). Petitioner seeks to add 12 additional parking spaces perpendicular to the west lot line. Because the proposed spaces would encroach into the 75-foot setback, Petitioner is requesting a reduction in the setback to 13.11 feet.

6. Robert Vogel, project engineer, testified to his firm's working with the YMCA for many years. The YMCA property was at one time considerably larger and included the Howard County Board of Education property to the northeast. As the YMCA was contemplating constructing a new facility, the Board of Education approached it in reference to the Board's need for a new elementary school site. The Board purchased a large portion of the YMCA property, which created a residual property, now the subject property. The Board's needs created the irregularly shaped Property. As part of the property transfer, the YMCA has a long-term lease on Board property abutting a portion of the easterly common lot line for parking and drive aisles. The YMCA shares off-site ingress/with the school.

7. Mr. Vogel further explained that the imposition of the I-district overlay on the Property caused a portion of the YMCA facility and parking spaces and drive aisles along the westerly lot line to becoming legally noncomplying to the 75-setback from residential districts imposed by the I-district overly, hence the need for the variance. The proposed variance would accommodate 12 additional parking spaces, which would be located next to existing parking spaces. The 13.1-foot proposed setback is consistent with the general setback of the 15 existing parking spaces closer to Montgomery Road. Petitioner is proposing to relocate existing evergreen trees and add additional landscaping required by the Landscape Manual between the parking spaces and the common lot line.

8. Mr. Vogel also explained that he is the engineer for the residential development proposed to be located on the adjoining property. In his view, the variance would have no adverse impact on the use and development of the adjoining property.

**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 requested variance complies 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. *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).

Additionally, Section 128.0.B.2 of the Zoning Regulations permits additions to noncomplying structures through the variance process.

In this case, the existing structure and parking uses are lawfully noncompliant to the Zoning Regulations. Consequently, the location of the existing structure and parking use, together with the Property's irregular shape, would cause any addition in this area to encroach into the 75-foot setback. Given the location of the noncomplying parking use and the proposed request for 12 parking spaces designed to complement the existing parking spaces within the setback, practical difficulties arise in complying strictly with the setback regulation. The Hearing Examiner concludes the Property's shape and the location of the noncomplying parking use are unique conditions causing the Petitioner practical difficulty in complying with the 75-foot setback requirement, in accordance with Section 130.0.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 parking spaces would be set back 13.1 feet from the common lot line, about the same distance as the existing spaces closer to Montgomery Road, leading the Hearing Examiner to conclude the variance would not alter the essential character of the neighborhood or district.

Concerning any substantial impairment to the appropriate use or development of adjacent property, the Hearing Examiner credits Mr. Vogel's testimony as the project engineer for both properties that there would be none. Additionally, landscaping will screen the use. The Hearing Examiner concludes the requested variance will not substantially impair the appropriate use or development of adjacent property and it will not be detrimental to the public welfare. The petition complies with Section 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, which are attributable to the Board of Education's needs for the property it purchased from the YMCA, and which caused the residual Property's resultant irregular shape. The petition complies with Section 130.0.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 proposed variance is for a reasonable use of the Property to ensure the continuing functionality of the use. It is therefore the minimum necessary to afford relief, in compliance with Section 130.0.B.2.a.(4).

ORDER

Based upon the foregoing, it is this 6<sup>th</sup> Day of April 2015, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of YMCA of Central Maryland for a variance to reduce the required structure and use setback from an adjoining R-A-15 (Residential: Apartments) zoned property in an R-SA-8-I (Residential: Single Attached) zoning district with an "I" (Institutional) overlay from 75 feet to 13.11 feet for parking spaces is **GRANTED;**

**Provided, however, that:**

1. The variance 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.

2. The Petitioner shall obtain all required 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.