

IN THE MATTER OF	:	BEFORE THE
OLD ANNAPOLIS ROAD PROPERTIES, LLC, T/A PRIME TIME LIQUORS	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 11-023V

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DECISION AND ORDER

On October 17, 2011, 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 Old Annapolis Road Properties, LLC t/a Prime Time Liquors for a variance to reduce the required 30-foot structure and use setback from a public street right-of-way to 12 feet for an addition in a B-1 (Business: Local) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

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

The Petitioner was not represented by counsel. Ronald Henriques testified in support of the petition. No one appeared in opposition to the petition.

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 Old Annapolis Road west of the US 29/MD108 intersection. The subject property is officially

identified as Tax Map 30, Grid 10, Parcel 99, Parcel B and the address is 9495 Old Annapolis Road (the Property).

2. Property Description. The .609-acre, irregularly shaped Property fronts on MD 108 on its south side and Old Annapolis Road on its north side. On the Property's east side is the US 29 entrance ramp to MD 108. The Property is improved with a building used as a liquor store, and restaurant/bar. The restaurant/bar is nestled into the southeast portion of the Property near Old Annapolis Road and it has a covered brick patio area with a wall enclosure on the south side (facing MD 108). The liquor store occupies the western portion of the building and its entrance is oriented to the building's west side.

Access is provided from Old Annapolis Road via a semi-circular driveway and landscape island. There are a concrete dumpster pad and fenced dumpster on the island. On the building's north side are the restaurant's stairs and a service loading area with a large storage container and a fenced storage area.

3. Adjacent Properties. The B-1 zoned Parcel A of the Allview Inn Subdivision (Parcel 99) is developed with townhouses. The R-20 (Residential: Single Family) zoned parcels to the southwest are improved with a single-family detached dwelling, excepting Parcel 288, Lots 19-22, which is the site of the New Life Mennonite Church. To the north are the POR-zoned Parcels 399, the site of a Howard County pumping station and Parcel 408, the site of a Howard County road salt storage building. To the salt dome's west is a 120-foot wireless telecommunications monopole and associated equipment shelter.

4. Zoning History. In BA Case No. 97-54V, the petitioner was granted a modification of

an approved variance to install an overhead covering over a portion of the patio. In BA 93-48v, the petitioner was granted multiple variances subject to four conditions.

The technical staff report notes the decision and order in BA Case No. 93-48V found that the then Allview Inn predated current zoning regulations, and that the bar/restaurant portion of the structures is located 40 feet from the Route 108 ROW, 29 feet from the US 29 ROW and zero feet from the Old Annapolis Road ROW. Additionally the building originally fronted Route 108 but owing to the new interchange, the site no longer has direct access to Route 108. Consequently, the building's front is now the rear and the rear is now the front.

5. The Variance Request. The Petitioner is proposing to construct a 727-square foot addition to the liquor store portion of the building for the storage of retail products. The addition would be constructed in the L-shaped recessed area between the liquor store and restaurant/bar. It would be about 38 feet wide and extend eight feet from the north side of the liquor store and about 29 feet from the north side of the restaurant. Because the addition would encroach into the Old Annapolis Road ROW, the Petitioner is requesting a variance to reduce the 30-foot structure and use setback to 12 feet.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made. Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a.(1) through (4), and therefore may be granted.

Old Annapolis Road Properties, LLC t/a Prime Time Liquors

(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.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).

In this case, there is no dispute that the Property is irregularly shaped. It is long and narrow and the southeast corner is truncated. As a result, the building envelope is confined to a narrow usable area. Consequently, the Hearing Examiner concludes the shape of the lot causes the Petitioner practical difficulty in complying with the setback requirements, in accordance with Section 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 Property is located within a predominately non-residential area and the proposed encroachment will be oriented to unstaffed, nonresidential uses across a road. The variance therefore will 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 Section 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 difficulty in complying strictly with the setback regulation arises from the width of the lot and was not created by the Petitioner, in accordance with Section 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 proposed addition is the minimal size needed for storage. Within the intent and purpose of the regulations, then, the variance is the minimum necessary to afford relief, in accordance with Section 130.B.2.a.(4).

Old Annapolis Road Properties, LLC t/a Prime Time Liquors

ORDER

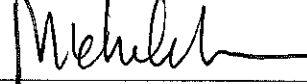
Based upon the foregoing, it is this 2nd Day of November 2011, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the variance petition of Old Annapolis Road Properties, LLC t/a Prime Time Liquors to reduce the required 30-foot structure and use setback from a public street right-of-way to 12 feet for an addition in a B-1 (Business: Local) 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 as testified to, and not to any other activities, uses, structures, or additions on the Property.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER



Michele L. LeFavre

Date Mailed: _____

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