

IN THE MATTER OF	:	BEFORE THE
BALTIMORE GAS & ELECTRIC Co.	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 16-010V

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DECISION AND ORDER

On August 1, 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 Baltimore Gas & Electric Co. (BGE) (Petitioner) for variances to reduce the 50-foot front setback to 20.5 feet and the 10-foot southernmost side setback to 0.75 feet in an RR-DEO (Rural Residential: Density Exchange Option) Zoning District, filed pursuant to § 130.0.B.2 of the Howard County Zoning Regulations (HCZR).

The Petitioner certified to compliance with the notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure. John Gontrum and Jennifer Busse, Esqs. represented the Petitioner. Collin Tydings and Zach Fisch appeared for the hearing and testified for Petitioner. Barnsley Williams also testified but not in opposition to the petition.

Petitioner introduced into evidence the exhibits as follows.

1. Enlarged aerial image of neighboring properties
2. Deed, Parcel 78
3. Deed, eastern section of Parcel 79
4. Deed, western section of Parcel 79
5. Board of Zoning Appeals Case No. 191-C, 1956
6. Variance Plan, April 7, 2016

- 7. (7.1-7.14) Photographs
- 7A. Stake-out exhibits & building restriction lines

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 on the west side of Greenberry Lane, about 1,800 feet north of Linden Church Road. It is identified as Tax Map 0028, Grid 0009, Parcels 78 & 79 and is also known as 13055 Greenberry Lane (the Property). Parcel 78 is 1.129 acres. Parcel 79 is 2.8102 acres and comprises two lots. The BGE site comprises the entirety of Parcel 78, the 1.782-acre, eastern portion of Parcel 79 and a very small section of the western portion of Parcel 79, according to the Variance Plan.

2. Property Description. The irregularly shaped Site is improved with a BGE "gas gate" facility with multiple structures and associated equipment. The Site is currently enclosed by a chain link fence as is visible on Petitioner's photographic Exhibit 7.

3. Vicinal Properties. Adjoining properties are also zoned RR-DEO. The southern and wooded lot that is part of Non-Buildable Bulk Parcel "G" fronts on Greenberry Lane. Across Greenberry Lane to the south is Non-Buildable Parcel "C." Parcel 403 to the north is improved with a single family detached home fronting on Greenberry Lane. To the west of the second section of Parcel 79 is MD 32. Greenberry Lane is currently a private road.

4. Zoning History. In 1956, the Board of Zoning appeals in ZB 191-C, granted BGE a permit to construct a gas metering and metering station on the Property. Petitioner Exhibit 5.

5. The Variance Requests. Petitioner seeks two variances for a security fence and related security camera poles. Because these structures would encroach 19.5 feet into the 50-foot structure front setback imposed by HCZR § 105.0.E.4.b.(2), Petitioner is requesting a variance to reduce the setback to 20.5 feet. Because these structures would encroach 9.25 feet into the 10-foot structure side setback imposed by HCZR § 105.0.E.4.c.(1), Petitioner is requesting a variance to reduce the setback to 0.75 feet. According to the Variance Plan (Exhibit 6), the proposed chain link fence would be nine feet in height, including one-foot high barbed wire running along the fence top. The security camera poles would be 20 feet in height.

6. BGE senior engineer Collin Tydings testified about the Site's history and requested variances. The Site was developed in the 1950s as a local gas distribution site where multiple gas suppliers pipe gas to the Site for distribution. BGE is proactively upgrading the Site to improve security, including new fencing and surveillance cameras. The proposed fence height, 9 feet, is the same height as the chain link fence approved in ZB 191-C.

7. Zach Fisch, project engineer, described the Site as a "gas gate" station with numerous pieces of buried and aboveground equipment and a few structures. The neighboring properties are visible in Exhibit 1, an aerial image. There are three points of access from Greenberry Lane, a private right-of-way, and a portion of which will become a public road for a subdivision on the east side, as is shown on Exhibit 1. In preparation for a Site survey, he researched deeds. Exhibits 2 & 3 are copies of the deeds encompassing the Site area, Parcel 78, and the eastern portion of Parcel 79. A small portion of the fence is also located on the western portion of Parcel 79. The third deed is for that portion of Parcel 79 closest to MD 32, Exhibit 4.

8. Mr. Fisch testified to the requested variances being based on the outline of the existing fence, introduced as Exhibit 6. The pink line depicts the required setbacks, and the blue line, the location of the replacement fence, which is the same location as the existing fence, which follows the existing improvements.

9. Mr. Fisch introduced Exhibits 7 and 7A. Exhibit 7 is the Variance Plan depicting the locations (points) from which the photographs in Exhibit 7A were taken. Exhibit 7A, Points 9003-9011 depict the location of the existing fence and existing equipment, including underground equipment. The proposed fence would avoid underground pipes and equipment, where possible.

10. Adjoining property owner Barnsley Williams acknowledged the importance of security to the facility.

CONCLUSIONS OF LAW

The standards for variances are contained in HCZR § 130.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 variance complies with §§ 130.B.2.a(1) through (4), and therefore may be granted, as conditioned.

(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.

Compliance with this first criterion is a two-part test. 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 presence of substantial subsurface conditions, underground gas lines and equipment, is a unique condition. These subsurface conditions restrict the location of a complying fence. There are also practical restrictions in this unique case, created by the nature of the use. These conditions cause Petitioner practical difficulty in complying with the required setbacks, 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 Findings of Fact support the conclusion that the proposed fencing and security camera/poles will be used for permitted purposes. The BGE gas gate station has existed on the

site since the 1950s. Directly across from the Site is an approved residential subdivision (Greenberry Subdivision, Plat 23453). The proposed fence and security cameras will not alter the essential character of the neighborhood or district in which the lot is located, 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 difficulty in complying strictly with the setback regulation arises from the unique nature of the use, 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 proposed fence and security cameras would be erected in the same area as the existing fence. 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

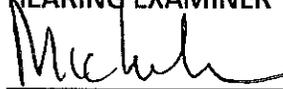
Based upon the foregoing, it is this **11th day of August 2016**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Baltimore Gas & Electric Co. for variances to reduce the 50-foot front setback to 20.5 feet and the 10-foot southernmost side setback to 0.75 feet in an RR-DEO (Rural Residential: Density Exchange Option) Zoning District, is hereby **GRANTED**;

Provided, however, that:

1. The variances shall apply only to the fence and security cameras as described in the petition and shown on the variance plan and not to any new structures, uses, or change in uses on the subject property or to any additions thereto.
2. Petitioner shall obtain all necessary permits.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER



Michele L. LeFavre

Date Mailed: 8/11/16

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.