

IN THE MATTER OF : BEFORE THE
BLT CANTINA, LLC : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: BA Case No. 19-025V

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DECISION AND ORDER

The Howard County Board of Appeals convened on September 6, 2019 to hear the petition of the BLT Cantina, LLC (Petitioner), for a variance to reduce the required 30-foot structure and use setback to 17.7 feet for a drive-thru aisle in a B-2 (Business: General) 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, William E. Erskine.

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 August 23, 2019 Department of Planning and Zoning Technical Staff Report and reviewing agencies comments;

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 BLT Cantina, LLC.

Michael Lardi, project manager for The Pettit Group, LLC 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, the Board makes the following Findings of Fact:

1. The subject property is identified as Tax Map 47, Grid 6, Parcel 991, Lot A. The address of the subject property is 8620 Washington Boulevard, Jessup, Maryland 20794 (the "Property").
2. The 0.8-acre Property is in the B-2 (Business: General) zoning district.
3. The Property has a relatively square shape with a curved frontage along the adjacent right-of-way and contains a fast food restaurant. The Property is about 196-feet wide and with a depth ranging from 164-feet to 198-feet. The high point is 250-feet at the northeast corner and the low point is 242 feet at the southeast corner.
3. The Petitioner requests a variance from Section 119.0.D.2.a of the Zoning Regulations to reduce the required 30-foot structure and use setback to 17.7-feet for a drive-thru aisle.

4. The Petitioner proposes to construct a one-story fast food restaurant. The proposed drive-thru lane encroaches 12.3-feet into the 30-foot structure and use setback from the right-of-way.

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. Based upon the foregoing Findings of Fact, and for the reasons stated below, the Board finds the requested variance complies with §§130.0.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).

The 0.8-acre Property is unique in its shape and topography. These unique physical conditions are peculiar to the lot and result in practical difficulties in complying strictly with the bulk regulations in accordance with HCZR §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 properties to the north, west and south contain commercial uses similar to the proposed development. To the east across Washington Boulevard is vacant wood-land and there is a warehouse to the northeast. The proposed encroachment is only for a drive-thru lane and all buildings will comply with the 30-foot setback. As such, the Board concludes that the variance is unlikely to alter the essential character of the area, substantially impair the appropriate use or development of the adjacent property or be detrimental to the public welfare, in accordance with §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 practical difficulty in complying strictly with the setback regulation arises from the shape, topography and the 42-foot stormwater management easement established through subdivision plat #7046 (F-86-134) in 1986. The Property owner purchased the Property in 1997. The practical difficulty resulting from the shape, topography and 42-foot wide storm-water easement was not created by the owner, in accordance with §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 12.3-foot setback reduction to the 30-foot setback is the minimum necessary to provide a 14-foot wide drive-thru lane. Therefore, the requested variance is the minimum

necessary to afford Petitioner relief, in accordance with §130.0.B.2.a(4).

ORDER

Based upon the foregoing, it is this 12th day of December, 2019, by the Howard County Board of Appeals, **ORDERED:**

That the petition of BLT Cantina, LLC (Petitioner), for a variance to reduce the required 30-foot structure and use setback to 17.7 feet for a drive-thru aisle in a B-2 (Business: General) zoning district is hereby **GRANTED**, subject to the following condition:

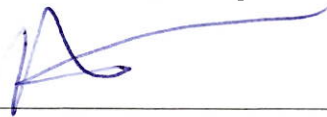
1. The Petitioner shall comply with all applicable Federal, State, and County laws and regulations.

ATTEST:

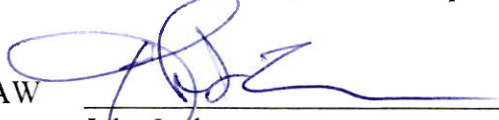
HOWARD COUNTY BOARD OF APPEALS



Robin Regner, Secretary

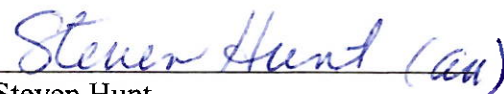

James Howard, Chairperson


Neeven Kurtom, Vice-Chairperson

PREPARED BY:
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