

IN THE MATTER OF	:	BEFORE THE
MCR REALTY COMPANY	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 12-002V

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DECISION AND ORDER

On May 24, 2012, 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 MCR Realty Company for a variance to reduce the 40-foot parking use setback from an external public street right-of-way to 3.9 feet for parking spaces in a CE-CLI (Corridor Employment-Continuing Light Industrial Overlay) 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.

Brian Cleary and Donnagh Kelly testified in support of the petition. No one appeared in opposition to the petition.

Petitioner introduced into evidence the exhibits as follows.

1. Plan depicting the number of "effective parking spaces"
- 2A-T. Photographs of the Property and vehicles parking in easement and in front of building
3. Aerial View of Property with distance of parking spaces from ROW on

- neighboring properties
- 3.1A-F. Photographs of parking spaces close to US 1
- 4A-F. Photographs of parking spaces close to US 1

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 US 1 (Washington Boulevard) about 1000 feet north of Patuxent Range Road. It is identified as Tax Map 43, Grid 19, Parcel 629, Parcel 3-B and is also known as 8380 Washington Boulevard (the Property).

2. Property Description. The 1.75-acre, generally rectangular Property has 171 frontage feet on US 1. It is about 192 feet along the rear lot line and about 429 feet along its southerly side lot line. The Property is improved with a 100-foot wide by 360-foot deep warehouse/distribution building for a refrigeration supply business. The building sits 50 feet at its closest point from US 1 and 10 feet from the northern lot line. The Variance Plan depicts 11 pull-in parking spaces along the southeastern side of the building, near its front, and 2 groups of 8 parking spaces on the building's center south side, for a total of 27 spaces.

A fifty-foot wide utility and ingress/egress easement for Parcels B-1, B-3, and B-4 runs along the building's south side and the building on adjoining Parcel B-1. This easement begins about 30 feet from the building's south side and runs the length of the building. The remainder of the Site is paved except for a greased median adjacent to US 1. Site topography is level.

3. Vicinal Properties. Adjacent properties are also zoned CE-CLI. To the Property's west (rear) is the paved Parcel B-4, a 4.08-acre site whose sole access to US 1 is via the easement on

the Property. This parcel extends south, behind the two parcels south of the Property. According to Mr. Kelly, Parcel B-4 is improved with a junkyard operation and a bus storage/parking operation. Properties to the north and south are improved with large warehouse buildings with significant paving for associated parking and loading. It is unclear what use operates across US 1.

4. Roads. US 1 has two southbound travel lanes, a center turn lane and an ultimate ROW width of 134 feet in the Property's vicinity. According to the TSR, visibility appears to be acceptable, with an estimated sight distance of about 400 feet to the north and south along US 1. According to State Highway Administration data, the traffic volume on US 1 north of Guilford Road was 26,460 annual average daily trips as of 2010.

5. The Requested Variance. Petitioner is requesting a variance to reduce the 40-foot parking use setback from the US ROW to a minimum of 3.9 feet in order to provide 10 additional parking spaces. These spaces would be sited perpendicular to the building façade facing US 1. In support of the variance request, Petitioner states that the Property is encumbered by a 50-foot utility and ingress/egress easement for Parcels B-1, B-3 and B-4. Because vehicles routinely park in this easement, there is insufficient customer parking space and the normal warehouse/distribution function of the site is disrupted.

6. State Highway Administration (SHA) Comments. The SHA's April 17, 2012 comments attached to the technical staff report recommends denial because the requested variance would cause an encroachment within the ultimate 134-foot ROW specified in the Route 1 Manual.

7. DPZ Division of Comprehensive and Community Planning Comments. The Division recommends denial of the requested variance request because the proposed parking would be located with the 134-foot ultimate design ROW for US 1 called for in the Route 1 Manual. The Division comments also reference the SHA and Howard County agreement to impose this ROW standard.

8. Technical Staff Report (TSR). The TSR recommends denial, based in part on SHA comments. The TSR also concludes there are no unique site constraints that would constitute unique physical conditions. The TSR further comments that the plan originally approved for the site provided 25 parking spaces and 27 were provided, including several spaces occupied by a large storage/cargo container. Additionally, the TSR would alter the essential character of the neighborhood by permitting a potentially precedent setting condition of allowing parking to encroach into the US ROW.

9. Mr. Cleary testified that through the years, several parking spaces are no longer available because drivers drop vehicles off in the 15 parking spaces denoted in red on Petitioner's Exhibit 1. As a result, when the parking lot is encumbered by parked vehicles customers cannot get in or out quickly. The back lot is a junkyard and bus storage use.

10. Mr. Kelly testified that the back property is a junkyard and bus storage/repair use. Junkyard haulers cannot turn around in the back property so they turn around in the easement area. When the easement area is overcrowded with waiting haulers, bus drivers will park their vehicle in the US 1 ROW. Petitioner's Exhibits 2N, 2Q, 2R and 2T photographically depict this situation.

11. Responding to the TSR's bases for recommending denial, Mr. Cleary disagreed with its conclusion that the variance would alter the essential character of the neighborhood or district. According to Mr. Cleary, many area properties have parking close to US in this area, as evidenced by Petitioner's Exhibits 3 and 4. Referring to Petitioner Exhibits 4D and E, Mr. Cleary testified that they are photographs of the nearby recently developed Mission Place. This a CE-CLI zoned development has parking in the front. He also noted the developers had dedicated the US 1 ROW to SHA.

12. Mr. Kelly testified that the business function of the warehouse is compromised due to a lack of convenient parking. The customers coming to the refrigeration warehouse are looking for parts to repair broken refrigerators, air conditioners and heating equipment in bars, grocery stores and convenience stores. They need to get in and out quickly, to prevent items from melting or perishing. Although he has talked to the junkyard operators about the parking problem, the issue continues because of new drivers.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. Pursuant to this section, I 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, I find the requested variance complies with Section 130.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.

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).

In this case, the generally rectangular Property with 171 frontage feet on US 1 is neither unusually narrow nor small. As the vicinity map on the first page of the TSR indicates, multiple vicinal properties are smaller and oddly shaped. I therefore conclude there are no unique conditions causing the Petitioner practical difficulties in complying with the applicable setback requirements. Rather, Petitioner's difficulties stem from the misuse of the ingress/egress easement by neighboring property owners. Although the Hearing Examiner is sympathetic to Petitioner's circumstances, the variance process is not the proper venue for resolving his difficulties. The petition does not accord 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.

DPZ recommends denial of the requested petition in part because it would potentially set a precedent of allowing parking to encroach in the US 1 row, which would alter the essential character of the neighborhood or district in which the Site is located, the CE-CLI district and the US 1 corridor. Petitioner contends neighborhood character would not be altered, pointing us to multiple properties in the area with parking close to US 1. Petitioner's Exhibits 3 and 4.

Importantly, DPZ and Petitioner differ in their assessments of the essential character or district in which the Property is located because the US 1 corridor is really two neighborhoods. The Petitioner's neighborhood, where parking is close to US 1, is the "aging" US 1 Corridor, in the words of the US 1 Manual (US 1 Manual, Page 1). DPZ's and the SHA's neighborhood is a new land use pattern, one that is more urban in character. Guiding this new land use pattern are three new zoning districts and the US 1 Manual, adopted in 2004.¹ The zoning regulations for these districts and the US 1 Manual establish design requirements for new development or redevelopment in the US 1 corridor and for properties with US 1 frontage.² The amount of frontage on US 1 that is devoted to parking lots kept to a minimum. Mission Place, seen in Petitioner's Exhibit 4D & E is a recent development representative of the "new" neighborhood. Although there is some frontage parking, the Hearing Examiner reasons the county supported it based on the overall project design.

The Property in this case is zoned CE-CLI. The Continuing Light Industrial Overlay District allows the continued use of existing warehouse buildings built before the CE zoning district was

¹ The three districts are the Corridor Employment-Continuing Light Industrial (CE-CLI) District, the Transit Oriented Development (TOD) District and the Corridor Activity Center-Continuing Light Industrial (CAC-CLI) District.

² These new requirements are set forth in the US 1 Manual, which the county adopted in 2004.

adopted. Two of the Route 1 Manual's land use goals for this district are allowing for continuing uses, with limited expansion of buildings and sites, and bringing existing properties into compliance with the Route 1 Manual over time (US 1 Manual, Page 19). The Hearing Examiner concurs with DPZ that allowing parking within the 40-foot parking use setback would alter the essential character of the "new" neighborhood by permitting a potentially precedent setting condition of allowing parking to encroach into the US 1 ROW.³ For these reasons, the Hearing Examiner concludes the requested variance would impermissibly alter the essential character of the neighborhood or district in which the lot is located, and be detrimental to the public welfare. The petition does not accord 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.

There being no finding of uniqueness, there are no resultant practical difficulties or hardships to address.

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

The proposed parking area would encroach about 13 feet into the 67-foot ultimate ROW. Because there is no finding of unique conditions, the "minimum necessary" test is moot.

³ The Hearing Examiner routinely denies variance requests where the request, if granted, would establish an inappropriate land use precedent in the neighborhood or district.

ORDER

Based upon the foregoing, it is this 4th day of June 2012, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of MCR Realty Company for a variance to reduce the 40-foot parking use setback from an external public street right-of-way to 3.9 feet for parking spaces in a CE-CLI (Corridor Employment-Continuing Light Industrial Overlay) Zoning District is hereby **DENIED**.

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 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.