

IN THE MATTER OF : BEFORE THE
THE LIPARINI COMPANY : HOWARD COUNTY
C/O NICHOLAS LIPARINI : BOARD OF APPEALS
Petitioner : HEARING EXAMINER
: BA Case No. 11-012V

.....
DECISION AND ORDER

On July 11, 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 The Liparini Company for variances to reduce the 7.5-foot side setback to five feet and to reduce the minimum 15-foot separation between structures to 10 feet for semi-detached dwellings in an R-12 (Residential: Single Family) 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 requirement of the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Sang Oh, Esquire, represented the Petitioner. Nick Liparini 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 generally located to the north and northwest of the Forest Avenue intersection with Highland Avenue. The subject property is

officially identified as Tax Map 38, Grid 13, Parcel 873, Lot 721 and the address is 6262 Forest Avenue (the Property). Lot 721, however, comprises multiple lots in the Harwood subdivision.

2. Property Description. According to the April 18, 2011 variance plan, the 2.17-acre Property is formed from 26 lots in the Harwood Subdivision. Lots 707-726 (20 lots) are located to the northwest of Highland Avenue and on the south side of Forest Avenue. Lots 683-688 are located on the north side of Forest Park and across from Lots 715-720. Each lot is generally 25 feet wide and 120 feet deep. The petition states the lots are substandard to the Zoning Regulations because they are less than the 12,000-square foot minimum lot size and the 60-foot minimum lot width required in the R-12 district. There are wetlands buffers in the rear section of several lots on the south side of Forest Avenue.

3. Adjacent Properties. The R-12 adjacent properties are unimproved lots within the Harwood Park subdivision.

4. The Proposal. The Petitioner is proposing to construct 13, 20-foot wide semi-attached dwellings with garages and 12-foot wide driveways accessed from Forest Avenue. In order to construct the 20-foot wide structures, the Petitioner is requesting a reduction in the 7.5-foot side setback imposed by Zoning Regulations Section 109.D.3.c.(1)(b) to five feet and a reduction in the 15-foot separation between structures imposed by Zoning Regulations Section 109.D.4.c.(1)(b)(ii) to 10 feet.

5. During my site visit, it appeared that many lots in Harwood Park are being redeveloped with various types of single-family and semi-attached dwellings. The Hearing Examiner takes notice that she has approved multiple variances for single-family and semi-attached dwellings in

the Harwood Park subdivision owing to the small lot sizes. The Hearing Examiner also takes notice of Board of Appeals Case No. 04-013V, wherein another Hearing Examiner approved variances for semi-detached dwellings on identically sized lots upon concluding the narrow lot sizes resulted in a building envelope that would accommodate only a 17.5-foot wide semi-attached dwelling, which is neither common nor reasonable in today's economy.

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.

(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, the 25-foot by 120-foot lots are less than the minimum 12,000 square foot minimum lot required in the R-12 zone. Were the applicable setbacks applied to the Property, the resultant building envelope would permit only 17.5-foot wide dwellings. Consequently, I conclude the small size of the lots and their narrowness are unique physical conditions causing 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 proposed dwellings will be used for a permitted purpose. As the evidence shows, and as I observed, the neighborhood consists of a broad variety of lot sizes and shapes and dwelling styles and shapes. Many homes in Harwood Park are semi-attached with less than the current minimal space between them and many homes have side setbacks that are less than required by the Zoning Regulations. The variances, if granted, will therefore 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 shape and size of the lots and were 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 dwellings are a reasonable size. 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).

ORDER

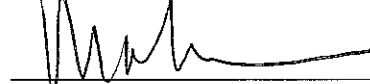
Based upon the foregoing, it is this **18th Day of July 2011**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of The Liparini Company for variances to reduce the 7.5-foot side setback to five feet and to reduce the minimum 15-foot separation between structures to 10 feet for semi-detached dwellings in an R-12 (Residential: Single Family) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations") is **GRANTED**;

Provided, however, that:

1. The variances shall apply only to the uses and structures as described in the petition submitted and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: _____

7/20/11

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.