

IN THE MATTER OF : BEFORE THE
RANDOLPH HOENES : HOWARD COUNTY
 : BOARD OF APPEALS
Petitioner : HEARING EXAMINER
 : BA Case No. 13-006V

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DECISION AND ORDER

On April 22, 2013, 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 Randolph Hoenes (Petitioner) for multiple setback variances related to a proposed single-family attached dwelling development in an R-A-15 (Residential-Apartments) 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. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Christopher Malagari testified on behalf of the Petitioner. No one testified 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 west side of Pine

Orchard Lane to the west and southwest of the intersection with Corporate Court. The subject property is officially identified as Tax Map 24, Grid 1, Parcel 647, Lot 2 and is also known as 3250 Pine Orchard Lane (the Property).

2. General Property Description. The petition describes the 5.1-acre Property as a shallow lot relative to the typical R-A-15 lot. The lot is unimproved and generally wooded.

3. Adjacent Properties. Adjacent properties are zoned B-1 (Business: Limited) and used for various businesses along Pine Orchard Lane or US 40, excepting a vacant property to the north.

4. The Requested Variances. The Petitioner is proposing a 71-unit single-family attached development and is therefore requesting the variances from Zoning Regulations Section 112.D as follows. The locations of these requested variances are denoted on the February 2013 Variance Plan submitted with the petition and described in the petition supplement.

1. Section 112.D.4.c.(3)(a). A reduction in the 50-foot zoning district setback for single family attached buildings to 40 feet along the southern, western and northern boundaries.
2. Section 112.D.5.d. A reduction in the 60-foot, rear to rear setback for single-family attached buildings to 38.5 feet for the interior units (Units K&L and I&J).
3. Section 112.D.5.e. A reduction in the 100-foot, rear to face, single-family attached building setback to 67 feet between the interior units (I&J) and the units fronting Pine Orchard Lane (Units A&B).

Christopher Malagari testified that the developer had previously prepared a conventional site plan to comport with the bulk regulations, which the Design Advisory Panel

and the Department of Planning and Zoning rejected. Petitioner redesigned the site plan to comply with the Route 40 Design Manual, as recommended.

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, the Hearing Examiner concludes the requested variances comply 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 Property is atypically shallow, a condition that greatly reduces the resultant building envelope. Consequently, I conclude the Property’s irregular shape is a unique physical condition causing the Petitioner practical difficulties 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 Route 40 Design Manual encourages the use of new land development patterns, which use land more efficiently and have a more mixed-use, pedestrian friendly and human scale and character. Key design concepts include buildings oriented closer to streets and parking oriented to the side of rear of buildings. (Chapter 3). If designed in strict accordance with the bulk regulations, the resultant design in this case would conflict with the essential character of the US 40 neighborhood as it is redeveloped, as well as the variance standard set forth in Section 130.B.2.a.(2), that a variance not alter the essential character of the neighborhood or district in which it is located. The granting of the variances will support the character of the neighborhood and district as it redevelops and will not impair the use or development of the adjacent business properties. It is unclear whether the vacant lot to the north is developable.

(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 difficulties in complying strictly with the setback regulations arise from the shape of the lot, 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 Petitioner is proposing 71 dwelling units, five less than permitted, according to the supplement to the petition. Within the intent and purpose of the regulations, then, the variances are the minimum necessary to afford relief, in accordance with Section 130.B.2.a.(4).

ORDER


Based upon the foregoing, it is this **25th Day of April 2013**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Randolph Hoenes for multiple setback variances related to a proposed single-family attached dwelling development in an R-A-15 (Residential-Apartments) Zoning District, is hereby **GRANTED**;

Provided, however, that:

1. The variances shall apply only to the uses and structures as described in the petition and the February 2013 Variance Plan 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: _____

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.