

IN THE MATTER OF : BEFORE THE
CFMS VENTURES LLC : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 11-027V

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DECISION AND ORDER

On July 23, 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 CFMS Ventures LLC for a variance to reduce the 50-foot parking structure and use setback from a public street right-of-way to 30 feet to construct a building in a M-2 (Manufacturing: Heavy) 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.

Michael J. Jack, Esquire represented the Petitioner. Conrad Filbert testified in support of the petition. No one appeared in opposition to the petition.

Petitioner introduced into evidence the exhibits as follows.

1. Variance Plan
2. Technical Staff Report

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 southwest side of Old Jessup Road about 1,400 feet south of the intersection with MD 175. It is identified as Tax Map 43, Grid 22, Parcel 629, Parcels 418 & 255 and is also known as 7948 Old Jessup Road (the Property).

2. Property Description. The 1.817-acre Property comprises two parcels. The northernmost, 37,619-sq. ft. Parcel 419 is generally rectangular and fronts about 100 feet on Old Jessup Road. It is improved with two buildings, a small office building located about 40 feet from the ultimate right-of-way (ROW) and a 100-ft. x 40-ft. warehouse located about 35 feet to the rear of the office building. The office building would be removed for the proposed development. The access drive is located near the common property line and leads to a paved area next to the south side of the two buildings, and then extends to the rear of the warehouse. There is a stand of woods next to MD 175. This parcel has an embankment along the road frontage and from here, the land rises in elevation along the northerly side.

Parcel 255 is a triangular shaped, 41,558-sq.ft. lot fronting about 300 feet on Old Jessup Road. A stormwater management facility is located in the southern corner and a paved truck turnaround area is located on the north side.

3. Vicinal Properties. Adjacent properties are also zoned M-2.

Parcel 255: Parcel 514 to the southwest side is apparently a storage site for trailers and vehicles.

Parcel 419. Parcel 253 to the north was approved for development for a concrete batching operation with SDP 08-117, but the lot is currently unimproved. MD 175 adjoins the

rear lot line with no site access. Across Old Jessup Road are Parcels 520 and 471, which are improved with residential structures. Parcel 472 to the south of Parcel 471 is a large gravel and paved storage lot. Further south is a taxicab operation.

4. Roads. Old Jessup Road has two travel lanes within a 60-foot ultimate ROW. The estimated sight distance is 300 feet to the south and north. Old Jessup Road terminates about 300 feet to the south of the Property.

5. The Requested Variance. Petitioner is requesting a variance to reduce the 50-foot structure and use setback up to 30 feet for an approximately 3,125 sq. ft. one-story office building. The proposed building would be 60' deep x 48.5' wide with a 6' x 7.7' front extension. A triangular portion of the building would encroach up to 20 feet into the setback.

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, Parcel 419 is unusually narrow for an M-2 zoned property. The embankment along the road frontage and the sloping area to the rear of the existing office building limit the buildable area. Parcel 255 is irregularly shaped. The Hearing Examiner concludes there are unique physical conditions causing the Petitioner practical difficulties in complying with the applicable setback and use 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 Property is located in an industrial area and along a road that terminates about 300 to the south. The requested variance would not alter the essential character of this older industrial neighborhood nor will it impair the appropriate use or development of adjacent property, 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 owner did not create the practical difficulties, 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 variance is the minimum needed for a reasonably sized office building, in accordance with Section 130.B.2.a.(4):

ORDER

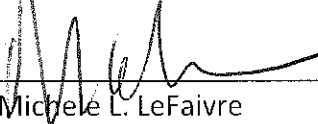
Based upon the foregoing, it is this **30th day of July 2012**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of CFMS Ventures LLC for a variance to reduce the 50-foot parking structure and use setback from a public street right-of-way to 30 feet to construct a building in a M-2 (Manufacturing: Heavy) Zoning District, is **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the reduction in setback as described in the petition and depicted on the Variance Plan submitted on May 17, 2012 and not to any other activities, uses or structure on the Property.
2. Petitioner shall obtain all necessary permits.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER



Michele L. LeFavre

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.