

IN THE MATTER OF	:	BEFORE THE
SHEPPARD PRATT HEALTH SYSTEMS, INC.	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 17-040V

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DECISION AND ORDER

On March 5, 2018, 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 Sheppard Pratt Health Systems, Inc., (Petitioner) for variances to reduce the 30-foot parking use setback from an external public street right-of-way (ROW) to 14 feet for parking spaces associated with a Behavioral Health Services campus in an M-1 (Manufacturing: Light) zoning district, filed pursuant to § 130.0.B.2 of the Howard County Zoning Regulations (HCZR).

Petitioner certified to compliance with the advertising and posting requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure.

John Gontrum, Esq., represented the Petitioner. At the outset of the petition, Petitioner concurred with the technical staff report (TSR) recommending approval. Petitioner introduced into evidence Exhibit 1, an updated variance plan, depicting adjoining property owner information and other details.

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 1st Election District on the

parking use setback from an external public street right-of-way imposed by HCZR § 122.0.D.2.a to 14 feet for parking spaces. According to the revised plan, additional landscaping is proposed to buffer the view of the encroaching parking spaces.

CONCLUSIONS OF LAW

The standards for variances are contained in HCZR § 130.0.B.2.a. This section authorizes the Hearing Examiner to 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 Hearing Examiner finds the requests comply with HCZR §§ 130.0.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. 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).

With respect to the first prong of the variance test, the Maryland courts have defined “uniqueness” thus.

In the zoning context, the ‘unique’ aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. ‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to characteristics as unusual architectural aspects and bearing or party walls. *North v. St. Mary’s County*, 99 Md. App. 502, 514, 638 A.2d 1175 (1994) (emphasis added.)

In this case, the irregular-shape Property, sloping topography, and the three streams, floodplain, and wetlands areas coursing the site are unique physical conditions causing practical difficulties and hardship in comply with the 30-foot use setback, in accordance with § 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 proposed setback encroachment is adjacent to a wooded area located between the Property and the exit lanes from northbound 1-95 to eastbound MD 100. The encroachment into the setback will not be visible from the public roads, parking perimeter landscaping is proposed, and there is no evidence the reduced setback would substantially impair the use of adjacent property or be detrimental to the character with the neighborhood and zoning district, 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 unique physical conditions predate the Petitioner's 2010 purchase of the Property; the owner did not create the practical difficulties and hardships, 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 requested variance is the minimum necessary to comply with off-street parking requirements. The TSR notes the 33 encroaching parking spaces are a small percentage of the overall parking in the proposed development. The petition accords with § 130.0.B.2.a(4).

north side of Meadowridge Road about 220 feet east of the 1-95 right-of-way (ROW) and is known as Tax Map 0037, Grid 0023, Parcel 756, Lot A and B, and is also currently known as 6572 and 6582 Meadowridge Road (the Property).

2. Property Description. Two large lots comprise the 39.11-acre, M-1 (Manufacturing: Light) zoned, irregularly shaped Property. Lot A is the southern section and Lot B is the northern section. Three wooded areas with tributary streams and associated floodplains, wetlands, and stream buffers run through the Property. Summit Rock Drive enters the site from a wide entrance on Meadowridge Road and extends through the southern area of the Property, with a bridge crossing over the southernmost stream. North of this road are two large cleared and graded areas where the future facility will be located. A 50-foot wide public utility ROW runs along the south side of Lot B. The Property's highest elevations lie in the northeastern section and along the north lot line of Lot B. From here, the elevations drops toward the streams.

3. Vicinal Properties. All vicinal properties are zoned M-1. I-95 and the MD 100 interchange lie to the north. Meadowridge Memorial Park Cemetery lies to the southeast. To the south is a single-family detached dwelling and a contractor office and storage area. To the northwest is a warehouse.

4. Roads. Meadowridge Road has two travel lanes and approximately 21 feet paving feet along the Property's front within a variable width right-of-way. The speed limit is 40MPH. According to State Highway Administration data, the traffic volume on Meadowridge Road from US 1 to MD 100 was 8,995 AADT (Annual Average Daily Traffic) as of 2016.

5. The Variance Request. Petitioner is requesting a variance to reduce the 30-foot

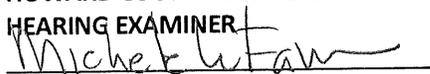
ORDER

Based upon the foregoing, it is this **26th Day of March 2018**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Sheppard Pratt Health Systems, Inc. for variances to reduce the 30-foot parking use setback from an external public street right-of-way (ROW) to 14 feet for parking spaces associated with a Behavioral Health Services campus in an M-1 (Manufacturing: Light) zoning district, is **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the uses and structures as described in the petition and plan, as revised, and not to any other activities, uses, structures, or additions on the Property.
2. Petitioner shall obtain all required permits.
3. Petitioner shall comply with all state and local laws and regulations.

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.