

IN THE MATTER OF	:	BEFORE THE
Shree Hari Krishna, LLC	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 22-033V

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DECISION AND ORDER

On August 1, 2023, 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 Shree Hari Krishna, LLC (Petitioner) for a variance (orally amended during the evidentiary hearing) to reduce the minimum structure and use setback to a residential zoning district from the western property boundary from 30' to 5', a variance of 25', for the creation of a parking lot to serve a proposed two-story structure to be developed with 1,000 sq ft of retail and 2,000 sq ft of office space (3,000 sq ft in total) on the first floor, and on the second floor, 3 apartment units (3,000 sq ft), in Council District 2, Election District 2, at Tax Map 47, Grid 11, Parcels 458 and 691, also identified as 9002 Baltimore Street, Savage, Maryland, in the B-1 (Business: Local) Zoning District, filed pursuant to § 130.0.B.2 of the Howard County Zoning Regulations (the HCZR) for a variance from § 118.0.D.2.b.

The Petitioner certified to posting the required sign as required by the Howard County Code, but the sign obviously did not remain on the Property for 30 days as required as various residents testified to its absence. Your Hearing Examiner viewed the property in accordance with the Hearing Examiners Rules of Procedure and the property was not posted. Robert Vogel (engineer) testified in support of the Petition. Neither the Petitioner nor any other person appeared in support of the Petition. Susan Garber, Erin Collier Melurani (Savage Mill), Kevin Burke, Monica McColm, Norma Broadwater, Steve Kahn, Patrick Hemler, Deborah Clever, Theresa Fichera, and James Rohlf, all testified in opposition.

FINDINGS OF FACT

Based upon the evidence of record, the Hearing Examiner finds as follows:

1. Property Identification and Description. The approximately 0.915-acre property is located on the north side of Baltimore Street, south of MD 32, west of Washington Blvd (US 1), in the northwest quadrant of the intersection of Baltimore Street and Savage Guilford Road, adjacent to the United Methodist Church of Savage. The subject property lies in Council District 2, in the 2nd Election District, Tax Map 47, Grid 11, Parcels 456 and 691, and is identified as 9002 Baltimore Street, Savage, Maryland (the Property). The Property is developed with 2 retail structures, which will remain, and a single-family detached dwelling, garage, and residential driveway all of which are

proposed for removal and proposed to be redeveloped with a 3,000 sq ft footprint two-story mixed use structure.

2. Adjacent Properties. The adjacent properties to the north of the Property are zoned R-12 (Residential: Single) and are improved with single family detached dwellings. (One of which is the original Savage firehouse which has been converted.) Adjacent to the west of the Property is property in the R-12 (Residential: Single) zoning district and improved with an occupied historic home owned by the United Methodist Church of Savage and other single-family detached dwellings. To the south of the Property, across Baltimore Street, is property in the B-1 (Business: Local) (Ma's Kettle, a restaurant in a historic structure which is currently closed). To the east is property also in the B-1 (Business: Local) zoning district along Savage Guilford Road. There are three schools located on Savage Guilford Road in close proximity to the subject Property and the intersection with Baltimore Street. The neighborhood is primarily residential in nature with the subject Property developed as the Savage Strip Center in its center. The Strip Center was constructed in 1982 and is located within 6 feet of Savage Guilford Road and within 6 feet of Baltimore Street. This Center was constructed unrestricted by the 30' setback requirements. This Center is constructed of cinder blocks and has not been maintained.

3. Roads. Baltimore Street has two (2) lanes and on-street parking on both sides within a 60-foot-wide right-of-way. The speed limit is 25 miles per hour. Savage Guilford Road has two (2) lanes within a 40-foot-wide right-of-way. The speed limit is

30 miles per hour. The intersection of these two roads, where the subject property is located, is the busiest intersection in Savage.

4. Water and Sewer Service. The Property is within the Metropolitan District and the Planned Service Area for water and sewer.

5. General Plan. The Property is designated Established Community on the Designated Place Types Map of the PlanHoward 2030 General Plan. Baltimore Street and Savage Guilford Road are classified as Minor Collectors.

6. Zoning History. The Department of Planning and Zoning does not have record of any previous zoning petitions for the Property. SDP-19-017 was a prior attempt to further develop the Property which was ultimately withdrawn.

7. Agency Comments. In response to the Development Engineering Division comments regarding noncompliance with the parking regulations, Petitioner submitted a revised Site Plan dated April 2023 modifying the request for 3,000 sq ft of retail use and in lieu thereof requesting only 1,000 sq ft of retail and 2,000 sq ft of office space, which has a lower parking generation. The Division of Land Development provided the following comments:

1. The subject property proposed similar improvements under SDP-19-017 - 'Savage Strip Center'. The plan was ultimately withdrawn by the applicant from County Review. The plan exhibit should be updated to note that SDP-19-017 is void.

2. Environmental Concept Plan ECP-17-013 for the site was submitted for the improvements shown on SDP-19-017. Previous approval of ECP-17-013 do not constitute approvals for the current proposal. Applicant is advised to consult with the Division of Development Engineering to confirm if processing a new ECP will be required.

3. A Pre-submission Community Meeting will be required per Sections 16.147 and 16.156 of the Subdivision and Land Development Regulations.

4. A Plat of Revision will be required for the proposed updates to the setbacks and easements prior to submitting a Site Development Plan.

- a. The Plat will need to reference the updated building and use setbacks and any adjustments approved under the Variance.
- b. Any required easements will need to be shown for the proposed use.
- c. OLD notes that the project area includes two separate properties that appear to share parking. The plat submission should address the shared parking by recording an easement and shared parking agreement, or by combining the properties.

5. A Site Development Plan for the proposed site improvements will be required prior to applying for permits with the Department of Inspections, Licenses and Permits.

- a. Perimeter landscaping, internal landscaping, parking lot landscaping and street trees will be required in accordance with Section 16.124 of the Howard County Code and the Landscape Manual. The landscaping plan will be reviewed as part of the Site Development Plan.
- a. The building and parking location relating to the setbacks will need to be verified with the Site Development Plan. The setbacks should correspond to the related plat. It appears the existing Building B and the associated parking are within in the setback area. This petition does not address this conflict with the Regulations. The applicant should propose solutions for evaluation as part of the plat and site plan submittals.
- b. The Site Development Plan must address Parking requirements in accordance with Section 133.0 of the Zoning Regulations. The plan exhibit provided with the variance application does not appear to provide adequate on-site parking. Approval of BA-22-033V should not be construed as approval of the parking as shown on the plan exhibit. The applicant should propose solutions for evaluation as part of the plat and site plan submittals.
- c. The Site Development Plan must address Forest Conservation

requirements in accordance with Section 16.1200 of the Howard County Code.

6. Please note that this plan is similar to SDP-19-017 - 'Savage Strip Center'. After several review cycles of that plan, the applicant withdrew the plan from County review. OLD notes that the proposed layout is similar to some of the earlier variations and does not address some of the community concerns that were previously raised. DLD offers the following advisory comments:
 - a. The existing building interferes with the intersection site distance.
 - b. While the community supported development of the site, they felt a better solution was possible. Their preference was to raze the existing building and build a new two-story building either more central or to the west side of the property to provide better intersection visibility and create an opportunity for community gathering and interaction.

8. The Requested Variance. Petitioner is proposing to demolish and remove an existing single-family detached dwelling unit, garage, and residential driveway and to construct a mixed-use structure with a 3,000 sq ft footprint and related parking. It is the related required parking which is proposed to be located within the 30-foot building and use setback from a residential zone (United Methodist Church of Savage). In order to construct the proposed mixed-use structure, and to meet the required parking for the proposed mixed-use structure, Petitioner is requesting a variance from the minimum setback from a residential zone from 30' to 5', a reduction of 25'. It is only the required parking and/or fencing which is proposed within the 30' setback.

9. Opposition Testimony. While each citizen was articulate regarding their opposition to the Petition, with the exception of James Rohlfs, their concerns are going to be identified collectively. This is a residential neighborhood and additional commercial will alter/impair the essential character of the neighborhood. The County's

Route 1 Revitalization Plan identifies US Rt 1 as the location for the type of mixed-use proposed by this Petition. The Property is located at the busiest intersection in Savage and existing structures, constructed in 1982, are located 6 feet from both Baltimore Street and Savage Guilford Road. There are 3 schools located on Savage Guilford Road in the proximity of the Property. HoCo By Design indicates that infill development must be given sensitive consideration and commercial development belongs along the US Rt 1 corridor. Due to the historic nature of Savage, it is not in keeping to put more commercial in the center of town. Any hardship is self-imposed upon the Petitioner who should have been aware of the setback requirements when the property was purchased in 2015. The variance is needed due to the proposed overdevelopment of the Property. The existing strip center on the property has not been maintained and there is concern that Petitioner will not maintain the proposed construction, the landscaping, the dumpsters, and the stormwater management. Petitioner has changed the existing convenience store and laundromat with the installation of pool tables. Traffic is an overarching concern and will not be addressed until a later stage (to late) in the development process. Petitioners' failure to maintain the required signage for the hearing is indicative of their lack of desire to work within the community. Several of the citizens work at Savage Mill and at Carroll Baldwin Hall and discussed the impact of the proposed development on these historic properties. The historic nature of Savage is woven into the fabric of the community and the proposed development will be a blight. The proposed architecture is not in keeping with the historic community. Savage is a big focus in Green Howard and the removal of the trees obscuring the noise and sound

pollution from the existing commercial development on the Property has resulted in the incursion of this noise and light pollution into the Rohlf's adjacent residential property, and further commercial development, especially a two-story structure, will further exacerbate the problems created by the Petitioner. The removal of the existing trees on the Property has resulted in water runoff issues and the creation of even more impervious surface will create further stormwater management issues especially with the loss of the on-site trees. Kevin Burke participated in the evidentiary hearing virtually and walked around this portion of the neighborhood providing a view of the existing situation, the deteriorating strip center, spoke to the increasing crime at the center, showed the home proposed for removal, the historic house across Baltimore Street that used to contain a restaurant, and the 6 foot setback from both Baltimore Street and Savage Guilford Road of the existing strip center which causes traffic problems.

CONCLUSIONS OF LAW

The standards of variances are contained in HCZR Section 130.0.B.2.a. Pursuant to this Section, the Hearing Examiner 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, the Hearing Examiner finds the requested variance fails to comply with Section 130.0.B.2.a.(1) through (4), and therefore must be denied.

(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 the 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).

As shown on the Variance Exhibit, the lot is roughly square in configuration. There is no evidence of steep slopes or constraining environmental features. There are no “unique physical conditions” that give rise to practical difficulties. Petitioner argues that the 30’ setback along the perimeter of the Property is the only physical condition. A required setback is not a “unique physical condition” of a property. The Courts in Maryland have opined that a required setback cannot form the basis for a finding of “unique physical condition” of a property for a variance. Petitioner has failed to provide any evidence of a unique physical condition of the Property which results in a hardship. The Petitioner

simply wants to overdevelop the Property. Therefore, the Petition does not meet the requirements of Section 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 Property is located in developed single family residential neighborhood. The commercial development and architecture will alter the character of the neighborhood, will impair the use and development of adjacent properties, and will be detrimental to the public welfare at this busy intersection. Petitioner has failed to meet its burden of proof as required by Section 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 practical difficulty in complying strictly with the bulk regulations requiring a 30-foot building and use setback from a residential zone is the result of the proposed overdevelopment of the Property which is already developed and utilized with two retail structures. Petitioner was or should have been aware of the setback requirement when it purchased the Property in 2015. Petitioner was certainly made aware of Howard County development regulations when it was forced to withdraw its previous SDP-19-017 which also attempted to over develop the Property. Petitioner has failed to meet its burden of proof as required by Section 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.

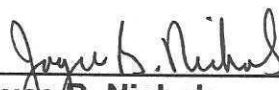
The 25' variance sought from the 30' structure and use setback from a residential zone, is not needed to permit the reasonable use of the Property; the requested variance is only needed to overdevelop the Property. Petitioner has also failed to meet its burden of proof as required by Section 130.0.B.2.a.(4).

ORDER

Based upon the foregoing, it is this 2nd day of August, 2023, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of Shree Hari Krishna, LLC, for a variance to decrease the minimum structure and use setback from a residential zone, from 30' to 5', a variance of 25', in order to construct parking required to support the proposed 3,000 sq ft of apartments, the proposed 1,000 sq ft of retail, and the proposed 2,000 sq ft of office mixed use, in Council District 2, Election District 2, Tax Map 47, Grid 11, Parcels 456 and 691, also identified as 9002 Baltimore Street, Savage, Maryland, in the B-1 (Business: Local) Zoning District, be and is hereby **DENIED**.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Joyce B. Nichols

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.