

<b>DPZ Office use only:</b>	
CASE NO.	<u>BA-20-003 V</u>
DATE FILED	<u>7/23/20</u>

**RESIDENTIAL DISTRICT VARIANCE PETITION  
TO THE HOWARD COUNTY HEARING EXAMINER**

**1. VARIANCE REQUEST**

SECTION 112.1.D.4.a(1)(a) of the Zoning Regulations Reduce the 30' structure setback to 8.74' for the purpose of a retaining wall along Columbia Road; reduce the 30' uses setback to 10.41' for the purpose of private drive, sidewalk and parking.

SECTION 112.1.D.4.c(2)(a) of the Zoning Regulations Reduce the 50' apartment setback to 40.67' for the purpose of an apartment building at the north site boundary; reduce the 50' apartment setback to 20.70' for the purpose of apartments at the east site boundary.

SECTION 112.1.D.4.c(2)(b) of the Zoning Regulations Reduce the 20' "other structures and use" setback to 16.05' for the purpose of sidewalk along the northern boundary; reduce the 20' building and use setback to 5.0' for sidewalk along the east boundary.

SECTION 112.1.D.4.b(1)(c) of the Zoning Regulations Reduce the 20' structure and use setback from 20' to 16.39' to a private street for the clubhouse.

**2. PETITIONER'S NAME** Dorsey Overlook, LLLP

TRADING AS (IF APPLICABLE) \_\_\_\_\_

ADDRESS 5670 B Furnace Avenue, Elkridge, Maryland 21075

PHONE NO. (W) 410-788-0027 (H) \_\_\_\_\_

EMAIL \_\_\_\_\_

**3. COUNSEL FOR PETITIONER** Thomas G. Coale

COUNSEL'S ADDRESS 5100 Dorsey Hall Drive, Ellicott City, Maryland 21042

COUNSEL'S PHONE NO. 410-964-0300

EMAIL tcoale@talkin-oh.com

**4. PROPERTY IDENTIFICATION**

ADDRESS OF SUBJECT PROPERTY 9562, 9566, 9570, 9580, 9584, 9590, 9598 Old Route 108, Ellicott City, Maryland 21042

ELECTION DISTRICT 2<sup>nd</sup> ZONING DISTRICT R-APT ACREAGE 4.49 ac. existing area; 5.57 ac. proposed project area subsequent to right-of-way transaction

TAX MAP # 30 GRID # 9 PARCELS # 51, 52, 53, 54, 55, 67, 288

**REVISED**

SUBDIVISION NAME (if applicable) \_\_\_\_\_

PLAT NUMBER AND DATE \_\_\_\_\_

**5. PETITIONER'S INTEREST IN SUBJECT PROPERTY**

- OWNER (including joint ownership)
- OTHER (describe and give name and address of owner)

**PLEASE READ CAREFULLY  
DATA TO ACCOMPANY PETITION**

**6. VARIANCE PLAN**

No application for a variance shall be considered complete unless the plan indicates the required setback or other requirement, and the requested variance from the subject setback or other requirement. The submitted plans shall be folded to approximately 8 ½ x 14 inches.

**The plan must be drawn to scale and must include the items listed below:**

- (a) Courses and distances of outline boundary lines and the size of the property
- (b) North arrow
- (c) Zoning of subject property and adjoining property
- (d) Scale of plan
- (e) Existing and proposed uses, structures, natural features and landscaping
- (f) Location and surface material of existing and proposed parking spaces, driveways, and points of access; number of existing and proposed parking spaces
- (g) Location of all building and use restriction lines
- (h) Same as (a) through (g) above, of any adjoining, confronting and vicinal properties as necessary for proper examination of the petition, or, if applicable, a copy of the subdivision plat for the community
- (i) Location of well and private sewerage easement area, if property is to be served by private water and sewer
- (j) Election District in which the subject property is located
- (k) Tax Map and parcel number on which the subject property is located
- (l) Name of local community in which the subject property is located or name of nearby community
- (m) Name, mailing address, telephone number (and e-mail address, if any) of the petitioner
- (n) Name, mailing address, telephone number (and e-mail address, if any) of attorney, if any
- (o) Name and mailing address of property owner
- (p) Floor area and height of structures, setback distances from property lines, and other numerical values necessary for the examination of the petition

- (q) Location of subject property in relation, by approximate dimension, to the center line of nearest intersection of two public roads
- (r) Ownership of affected roads
- (s) A detailed description of all exterior building materials for all proposed structures
- (t) Any other information as may be necessary for full and proper consideration of the petition

**7. VARIANCE**

- A) Describe why the application of the Zoning Regulations in question to your particular property would result in practical difficulties or unnecessary hardships in complying strictly with the bulk requirements:
1. The physical character of the property is different from the character of the surrounding properties because of its ( ) narrowness, ( ) shallowness, ( ) shape, ( ) topography, (X) other; explain: See attached Supplement
  2. The uniqueness of the property prevents me from making a reasonable use of the property because: See attached Supplement
- B) The intended use of the property, in the event the petition is granted: Residential development.
- C) Any other factors which the Petitioner desires to have considered: See attached Supplement
- D) Explain why the requested variance is the minimum necessary to afford relief: See attached Supplement
- E) Is the property connected to: public water?:  Y  N; public sewer?:  Y  N
- F) If the variance is granted, would it impact the water and/or septic/sewer on the site?  Y  N
- G) If the variance is granted, would it increase the intensity of uses on the site?  Y  N; if yes, explain: \_\_\_\_\_
- H) If the requested variance is granted, would it increase traffic to or from the site?  Y  N; if yes, explain: \_\_\_\_\_
- I) Describe in detail all means of vehicular access onto the site (i.e. width, type of paving, etc.):  
The Property is serviced by Old Route 108, which has been closed as a public road and is pending

transfer to the Petitioner as a private road pursuant to the request of the Howard County Department of Public Works.

J) Describe the topography of the site: Property slopes toward the northwest corner of the lot.

K) Will the existing or proposed structure be visible from adjacent properties?  Y  N; if yes, describe any proposed buffering or landscaping: Proposed landscaping buffer is depicted on the Variance Exhibit.

L) Describe any existing buffering or landscaping: There is significant existing landscaping between Petitioner's property and the residential properties to the north. Additional buffering is proposed along the northern property line.

**8. PRIOR PETITIONS**

Has any petition for the same variance, or substantially the same variance as contained herein, for the same property as the subject of this petition, been disapproved by the Hearing Examiner within twenty four (24) months of the date of this petition?  YES  NO

If yes, and six (6) months have elapsed since the last hearing, an affidavit setting forth new and different grounds on which re-submittal is based must be attached.

**9. ADDITIONAL MATERIAL, FEES, POSTING, AND ADVERTISING**

- a) If desired, supplemental pages may be attached to the petition. The following number of petitions, plans and supplemental pages must be submitted:
- *If the subject property adjoins a State road- original and 19 copies (application & plans)*
  - *If the subject property adjoins a County road- original and 16 copies (application & plans)*
- b) The undersigned agrees to furnish such additional plats, plans, reports or other material as may be required by the Department of Planning and Zoning and/or the Hearing Examiner in connection with the filing of this petition.
- c) The undersigned agrees to pay all costs in accordance with the current schedule of fees.
- d) The undersigned agrees to properly post the property at least fifteen (15) days prior to the hearing and to maintain the property posters as required, and submit an affidavit of posting at, or before the time of the hearing.
- e) The undersigned agrees to insert legal notices, to be published one (1) time in at least two (2) newspapers of general circulation in Howard County, as prepared and approved by the Department of Planning and Zoning, within at least fifteen (15) days prior to the hearing, and to pay for such advertising costs; and further agrees to submit two (2) approved certificates of the

text and publication date(s) of the advertisement at or before the time of the hearing.

10. PLANNING BOARD REVIEW

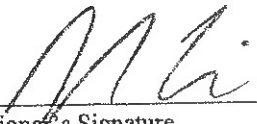
The Hearing Examiner may, at its discretion, refer a residential district variance petition to the Planning Board for review and a recommendation.

11. SIGNATURES

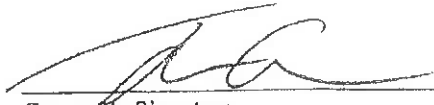
The undersigned hereby affirms that all of the statements and information contained in, or filed with, this petition are true and correct.

The undersigned has read the instructions on this form, filing herewith all of the required accompanying information.

Dorsey Overlook, LLLP  
Petitioners Name (please print)

 1/27/20  
Petitioner's Signature Date

Thomas G. Coale  
Counsel's Name (please print)

 1/27/20  
Counsel's Signature Date

\*\*\*\*\*

**For DPZ office use only: (Filing fee is \$300.00 plus \$25.00 per poster.)  
(Make checks payable to "Director of Finance")**

Hearing fee: \$ \_\_\_\_\_  
Poster fee: \$ \_\_\_\_\_  
TOTAL: \$ \_\_\_\_\_

Receipt No. \_\_\_\_\_

**PLEASE CALL 410-313-2350 FOR AN APPOINTMENT TO SUBMIT YOUR APPLICATION**

**County Website: [www.howardcountymd.gov](http://www.howardcountymd.gov)**

Revised: 07/12

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PETITIONER Dorsey Overlook, LLLP

PROPERTY ADDRESS 5670 B Furnace Avenue, Elkridge, Maryland 21075

Affidavit made pursuant to the pertinent provisions of Title 22 of the Howard County Code as amended.

THE UNDERSIGNED DOES HEREBY DECLARE THAT NO OFFICER OR EMPLOYEE OF HOWARD COUNTY, WHETHER ELECTED OR APPOINTED, HAS RECEIVED PRIOR HERETO OR WILL RECEIVE SUBSEQUENT HERETO, ANY MONETARY OR MATERIAL CONSIDERATION, ANY SERVICE OR THING OF VALUE, DIRECTLY OR INDIRECTLY, UPON MORE FAVORABLE TERMS THAN THOSE GRANTED TO THE PUBLIC GENERALLY IN CONNECTION WITH THE SUBMISSION, PROCESSING, ISSUANCE, GRANT OR AWARD OF THE ATTACHED APPLICATION FOR A RESIDENTIAL DISTRICT VARIANCE AS REQUESTED FOR THE PROPERTY REFERENCED ABOVE.

I WE, DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE AFOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY, OUR, KNOWLEDGE, INFORMATION AND BELIEF.

Keely L. Wagner  
Witness

[Signature] 1/27/20  
Signature Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature Date

## HOW A REQUEST FOR A VARIANCE IS EVALUATED

All requests for variances are evaluated based upon the following criteria of Section 130.B.2.a.(1) through (5) of the Howard County Zoning Regulations:

- (1) That there are unique physical conditions, including irregularity, narrowness or shallowness of lot or shape, exceptional topography or other existing features peculiar to the particular lot; and that as a result of such unique physical conditions, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.
- (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.
- (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.
- (4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum variance necessary to afford relief.
- (5) That no variance be granted to the minimum criteria established in Section 131 for special exception uses, except where specifically provided therein or in an historic district. Nothing herein shall be construed to prevent the granting of variances in any zoning district other than to the minimum criteria established in Section 131 except as provided therein.

**To be approved, a variance request must comply with all of the criteria noted above. For a general explanation of what the criteria mean from a legal standpoint and how they are viewed by the Hearing Examiner, please read the attached Variances: The Exception to the Zoning Rule.**

For an explanation of the official procedures that are followed in the processing, hearing and decision-making of a variance request, you may obtain a copy of the Rules of Procedure of the Hearing Examiner from the Department of Planning and Zoning.

## Supplement to Residential District Variance Petition

**7(A). Describe why the application of the Zoning Regulations in question to your particular property would result in practical difficulties or unnecessary hardships in complying strictly with the bulk requirements:**

*(1) The physical character of the property is different from the character of the surrounding properties because of its shape and other reason; explain:*

Petitioner is proposing 82 dwelling units on 4.49 acres of R-APT zoned property located at the intersection of Route 108 and Columbia Road. In order to facilitate this development, Howard County has requested that Petitioner take ownership of Old Route 108, which provides the sole means of ingress and egress to Petitioner's property from Old Annapolis Road. Old Route 108 has been closed as a public road and is pending conveyance to the Petitioner as either an easement for parking and access or fee simple ownership.

As a public road, Old Route 108 was not subject to building and use setbacks. Once Old Route 108 is incorporated into the project, it will be subject to the use setback under Howard County Zoning Regulations (the "Regulations") Section 112.1.D.4.a(1)(a). Due to the fact Old Route 108 complied with the Regulations when it was a public road, but will no longer comply with the use setback as a private road, Old Route 108 qualifies as a noncomplying use under Section 128.0.B of the Regulations.

A noncomplying use, by its very nature, is a unique physical characteristic that creates a practical difficulty in complying with the bulk regulations. Petitioner seeks a variance in order to allow continued usage of the road to access the planned residential development.

The property also presents unique physical characteristics that necessitate variances from the structure setbacks under Section 112.1.D.4.a(1)(a), 112.1.D.4.c(2)(a), 112.1.D.4.c(2)(b) and 112.1.D.4.b(1)(c). First, there is a 40 foot drop in grade along the northern section of the parcel that terminates in an area of wetlands. Due to the topography and wetlands buffer, development is pushed away from the northern boundary and towards the southwest corner of the lot.

Second, there is a narrow strip of open space along the western lot line between Petitioner's property and Old Route 108. This wedge of property implicates the 50 foot setback from adjacent properties as opposed to the 20 foot setback from public street right-of-ways. The combination of natural features that push the development to the southeast corner of the lot and the strip of open space requiring a larger setback creates practical difficulties in complying with the bulk regulations.

The Hearing Authority has previously recognized the uniqueness of this Property on two separate occasions in BOA Case Nos. 16-033V and 18-004V, which have been attached for reference. In both instances, the Hearing Authority determined that the unique



features of the Property caused practical difficulties in complying with the bulk regulations. Petitioner incorporates the Hearing Authority's findings and conclusions of law in both cases by reference.

*(2) The uniqueness of the property prevents me from making a reasonable use of the property because:*

As indicated above, Old Route 108 is the sole access road between Petitioner's property and Old Annapolis Road. The requested variance is necessary to maintain the existing roadway, which Petitioner is entitled to as a matter of law. Without the requested variance, Petitioner would not be able to use Old Route 108 in a manner consistent with its current usage as a county road. The structure variances are necessary to accommodate the grade along the northern portion of the parcel and allow for a retaining wall that accommodates such a steep grade and avoid unnecessarily disturbing the existing grade and wetlands buffer area.

Petitioner incorporates the Hearing Authority's findings and conclusions of law in BOA Case Nos. 16-033V and 18-004V by reference.

**7(C). Any other factors which the Petitioner desires to have considered:**

Granting the requested variances would not alter the essential character of the neighborhood, would not substantially impair the appropriate use and development of adjacent properties, and would not be detrimental to the public welfare. The requested variances will not have any noticeable effect on any of the surrounding properties.

Notably, the requested variances do not increase the available density on-site. The bulk regulations for R-APT zoned property allow 25 units per net acre. Petitioner is proposing 82 units, which is far below what it would be allowed to build by-right in this zone.

As determined by the Hearing Authority in BOA Case No. 16-033V, "there is existing substantial landscaping between the closest proposed units and the dwellings in Dorsey Crossing." Additional landscaping is proposed in all areas where variances have been requested.

Petitioner did not contribute to or cause the circumstances prompting the need for the requested variances. As such, there is no self-created hardship.

**7(D). Explain why the requested variance is the minimum necessary to afford relief:**

The requested variances are the minimum necessary to afford Petitioner the relief necessary to build the necessary retaining wall and take advantage of existing topography.

As indicated in BOA Case No. 16-033V, this development has been designed in consultation with the Dorsey Crossing community and in a manner that will enable the

Petitioner and the county to increase sidewalk connectivity between the residents of the proposed development, the residents of Dorsey Crossing, and the Dorsey's Search Village Center. More specifically, the previous Hearing Examiner found that "[r]ather than alter the essential character of the neighborhood or district or impair the use of development of adjacent property, the variances will increase the public welfare." *Id.* at 7.

IN THE MATTER OF	:	BEFORE THE
TRIANGLE ROUTE 108 ASSOCIATES, LLC	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 16-033V

.....  
**DECISION AND ORDER**

On December 19, 2016, 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 Triangle Route 108 Associates, LLC (Petitioner) for three setback variances for a proposed apartment complex in an R-APT (Residential: Apartments) zoning district, filed pursuant to Section 130.0.B.2.a of the Howard County Zoning Regulations (HCZR).

The 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, Esquire, represented the Petitioner. Robert Vogel and Lee Eybel testified in support of the petition. No one appeared in opposition to the petition.

Petitioner introduced into evidence the exhibits as follows.

- 1A-G. SDAT Property/Parcel owner information
- 2. Existing Conditions, October 15, 2016
- 3. Copy of Variance Petition overlain with aerial image and site plan

**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 in the 2<sup>nd</sup> Election District on the north side of Old Route 108, about 480 feet southwest of Old Annapolis Road. The multi-property site is identified as Tax Map 0030, Parcels 51, 52, 53, 54, 67, 266, and Lots 12-34 and known as 9562, 9566, 9570, 9580, 9584, 9590, and 9598 Old Route 108 (the Property).

2. Property Description. The 4.649-acre irregularly shaped Property is currently improved with single-family detached dwellings and other uses and structures located along Old Route 108. Access to the Property is provided from Old Route 108 via Old Annapolis Road. Old Route 108 runs in a southerly direction and turns to the west, paralleling (new) Route 108 (Clarksville Pike). A concrete retaining wall runs along the south side of Old Route 108 parallel to Clarksville Pike. There is currently also a separate means of access for the westernmost lot abutting Columbia Road. In the northern portion of the Property is an intermittent stream, woodlands, and associated wetlands.

3. Vicinal Properties. The Property is relatively isolated. Parcel 65 to the north is the site of Dorsey Crossing, a townhouse development zoned R-A-15 (Residential: Apartments). Immediately adjoining the Property's northern lot lines on Parcel 65 is the Dorsey Crossing stormwater management facility (SWMF). Further east, Parcel 65 is a heavily landscaped, wooded area. To the north of this landscaped area are the residences of Dorsey Crossing closest to the proposed development. A small section of Parcel 65 also runs along the Property's eastern lot line and is here a Dorsey Crossing Open Space Lot. Parcel 65's eastern lot line abuts Old Route 108. To the south is Md Route 108. To the west is Columbia Road.

4. The Variance Requests (§§ 112.D.4)

Variance 1. Reduce the 30' structure side setback imposed by § 112.1.D.4.a.(1)(a) to 8.0' for a retaining wall up to 10' high along a portion of the Property's Columbia Road lot line.

Variance 2. Reduce the 50' apartment dwelling setback imposed by § 112.1.D.4.c.(2)(a) to 34.4' for an apartment building at the north site boundary. Variance No. 2 pertains to the proposed location of Apartment Building (dwelling) Units 15-16 in the northeast corner of the Property.

Variance 3. Reduce the 50' apartment dwelling setback imposed by § 112.1.D.4.c.(2)(a) to 20.30' for an apartment building (dwelling) along the east site boundary. Variance 3 relates to the proposed location of the easternmost apartment dwellings next to Open Space Lot 65.

5. Agency Comments. By county law, the Department of Planning and Zoning (DPZ) does not issue a technical staff report or make recommendations for variance petitions on residentially zoned property. Agency comments are generally advisory and pertain to post-Hearing Examiner decision stages of development, except where the comments bear on compliance with the HCZR. In this case, the Departments of Inspections, Licenses and Permits, the Bureau of Environmental Health, DPZ's Development of Engineering Division, and the Office of the Fire Marshal had no comments germane to the Hearing Examiner's evaluation of the petition for compliance with the four variance standards.

6. Robert Vogel, project engineer, testified to the existing lots pre-dating county zoning regulations, which explains their 25' lot width. Describing vicinal properties, Mr. Vogel testified to the right-of-way (ROW) associated with Columbia Road being wider than usual. He introduced into evidence Petitioner's Exhibit 1A-G, which contains the State Department of Assessments and Taxations property information for the 7 parcels comprising the Property. Some of these parcels include multiple lots owing to their older 25' width.

7. Mr. Vogel also introduced into evidence Petitioner Exhibit 2, an aerial image of

current Property conditions and 8 photographic images detailing specific physical conditions. Photo 5 depicts the closest townhouse in Dorsey Crossing (related to Variance No. 2). Photo 6 depicts the Open Space Lot on Parcel 65 (related to Variance No. 3). Photos 4, 7 & 8 depict the area where Old Route 108 turns west to parallel Clarksville Pike. Photos 1 (related to Variance No. 1), 2 & 3 depict the westernmost section of Old Route 108 and northbound Columbia Road.

8. Mr. Vogel further explained there is some 40 feet of fall in the northern section of the Property closest to the Dorsey Crossing SWMF. Eighty-two units designed as stacked townhouse apartment units are proposed with a maximum height of 58 feet. The units are not as high as a typical apartment structure and are designed as stacked townhouse apartment units after extensive consultation with Dorsey Crossing residents, who wanted units similar to theirs. The stacked units qualify as apartments. Petitioner Exhibit 3, which Mr. Vogel introduced, contains a schematic elevation of the buildings and which will have brick and vinyl siding. Three groups of buildings would have access alleys for parking. Sidewalks will provide access to the front of the buildings and along the edge of the complex. An important design feature of the proposed development is the connection of the internal sidewalk system to a proposed boardwalk nature area with benches to the north of the apartment complex. Additionally, sidewalks will be provided along the Open Space Lot to the east, which will provide access to the shopping center on the other side of Old Route 108 and to the Dorsey Search Village Center. Similarly, the sidewalk along the Dorsey Crossing section of Old Annapolis Road will be continued to increase connectivity to conveniences and retail. The area along the Jersey retaining wall will be further screened and landscaped to screen the views to/from the complex.

9. As Mr. Vogel explained, the variance for the retaining wall is necessary due to the 40' drop in the northern section of the Property. The requested variance from the Open Space Lot is unusual because the Property here does not abut Old Route 108 and so is subject to a 50' setback, not a 30' side setback. The third variance is to reduce the 50' setback from an R-A-15 zoning district. Still, the closest units in Dorsey Crossing is more than 100 feet distant. The requested variances really concern the setbacks from adjoining properties. Moreover, there is existing substantial landscaping between the closest proposed units and the dwellings in Dorsey Crossing. Mr. Vogel also described the additional landscaping to be installed along the perimeters, which will screen the proposed use and the areas where variances are requested.

10. Lee Eybel testified to being the president of the Dorsey Crossing HOA. The community worked with the developer for several years. The community believes the proposed development will be compatible and he believes the developer will listen to the community's concerns as the project proceeds. He is pleased with the developer's and the county's effort to increase sidewalk connectivity and provide access to area shops and retailers.

11. The Hearing Examiner took notice of the proposed development's excellent design and to the developer and county's commitments to sidewalk connectivity, on- and off-site.

#### **CONCLUSIONS OF LAW**

The standards for variances are contained in Section 130.0.B.2.a of the Regulations. 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

complies with Section 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. Section 130.0.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. *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) (italics added).

In this case, the presence of a stream and associated wetlands and buffers, together with the 40' fall in the northern section of the Property and its irregular shape are unique physical conditions causing practical difficulty in complying with the zoning district's bulk regulations. The extent of these physical conditions compel the need for the retaining wall variance and push the building envelope to the south and east. The petition accords 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 closest residence in Dorsey Crossing is some 100 feet from the nearest unit in the proposed development. The granting of the three variances are integral to the development of an apartment community that will be compatible with Dorsey Crossing. To this end, rather than develop the Property with vertical apartment complexes and more units, Petitioner, working closely with the community, designed a development as a stacked townhouse complex. Critically, the granting of the variances will enable the developer and the county to increase sidewalk connectivity between the residents of the proposed development, the residents of Dorsey Crossing and other area residents and area retail and service venues. Rather than alter the essential character of the neighborhood or district or impair the use of development of adjacent property, the variances will increase the public welfare. The petition complies 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 Petitioner did not create the practical difficulties, which are attributable to unique physical conditions. The petition complies 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 proposed variances are for a reasonable use of the Property, a stacked townhouse complex with fewer dwellings designed to be compatible with Dorsey Crossing, in compliance with § 130.0.B.2.a.(4).

ORDER

Based upon the foregoing, it is this 9<sup>th</sup> Day of January 2017, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Triangle Route 108 Associates, LLC, for variances to 1) reduce the 30' structure side setback imposed by § 112.1.D.4.a.(1)(a) to 8.0' for a retaining wall up to 10' high along a portion of the Property's Columbia Road lot line, 2) reduce the 50' apartment dwelling setback imposed by § 112.1.D.4.c.(2)(a) to 34.4' for an apartment building at the north site boundary, and 3) reduce the 50' apartment dwelling setback imposed by § 112.1.D.4.c.(2)(a) to 20.30' for an apartment building (dwelling) along the east site boundary, for a proposed stacked townhouse apartment development in an R-APT (Residential: Apartments) zoning district, is **GRANTED**;

**Provided, however, that:**

1. The variances shall apply only to the uses and structures as described in the petition as depicted on the Variance Plan and not to any other activities, uses, structures, or additions on the Property.
2. The Petitioner shall obtain all required permits.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

  
Michele L. LeFaivre

Date Mailed: \_\_\_\_\_

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IN THE MATTER OF : BEFORE THE  
DORSEY OVERLOOK, LLLP : HOWARD COUNTY  
Petitioner : BOARD OF APPEALS  
 : HEARING EXAMINER  
 : BA Case No. 18-004V

.....  
**DECISION AND ORDER**

On May 7, 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 Dorsey Overlook, LLLP (Petitioner) for variances to reduce the 30-foot use setback from an arterial public street right-of-way (ROW) to 11.25 feet for a private road and to reduce the 50-foot setback from the project boundary to 20 feet for a proposed apartment building in an R-APT (Residential: Apartments) zoning district, filed pursuant to § 130.0.B.2.a of the Howard County Zoning Regulations (HCZR).

The 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. Tom Coale, Esquire, represented the Petitioner. Robert Vogel testified in support of the petition. No one appeared in opposition to the petition.

Petitioner introduced into evidence the exhibits as follows.

1. Concept Plan showing site design revisions in response to Design Advisory Panel recommendations

**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 in the 2<sup>nd</sup> Election District on the north side of Old Route 108, about 480 feet southwest of Old Annapolis Road. The multi-property site is identified as Tax Map 0030, Parcels 51, 52, 53, 54, 67, 266, and Lots 12-34 and known as 9562, 9566, 9570, 9580, 9584, 9590, and 9598 Old Route 108 (the Property).

2. Property Description. The 4.649-acre irregularly shaped Property is currently improved with single-family detached dwellings and other uses and structures located along Old Route 108. Access to the Property is provided from Old Route 108 via Old Annapolis Road. Old Route 108 runs in a southerly direction and turns to the west, paralleling (new) Route 108 (Clarksville Pike). A concrete retaining wall runs along the south side of Old Route 108 parallel to Clarksville Pike. There is currently also a separate means of access for the westernmost lot abutting Columbia Road. In the northern portion of the Property is an intermittent stream, woodlands, and associated wetlands.

3. Vicinal Properties. The Property is relatively isolated. Parcel 65 to the north is the site of Dorsey Crossing, a townhouse development zoned R-A-15 (Residential: Apartments). Immediately adjoining the Property's northern lot lines on Parcel 65 is the Dorsey Crossing stormwater management facility (SWMF). Further east, Parcel 65 is a heavily landscaped, wooded area. To the north of this landscaped area are the residences of Dorsey Crossing closest to the proposed development. A small section of Parcel 65 also runs along the Property's eastern lot line and is here a Dorsey Crossing Open Space Lot. Parcel 65's eastern lot line abuts Old Route 108. To the south is MD Route 108. To the west is Columbia Road.

4. The Variance Requests (§§ 112.D.4). The proposed use underlying this variance

petition is a 4-story 133-unit age-restricted apartment complex in an R-APT zoning district, where the use is permitted as a matter of right. The Design Advisory Panel reviewed the project on April 11, 2018. Mr. Vogel testified to Petitioner redesigning the "L-shaped" structure to a "U-shape" and making other site changes in response to DAP comments and a subsequent meeting with the Department of Planning and Zoning. Petitioner Exhibit 1. However, this redesign does not alter the variance plan submitted with the petition, so the requested relief is unchanged.

Variance 1. Reduce the 30-foot use setback from an arterial public street ROW imposed by § 112.0.1.D.4.a(2) to 11.25 feet for a private road use. This setback concerns the conversion of the now-public Old Route 108 to a private road. Howard County has requested the closing of this section of a public road.

Variance 2. Reduce the 50-foot project boundary setback imposed by § 112.0.1.D.4.c.(2)(a) to 20.0 feet for an apartment building. This setback applies to the 20-foot setback along the east side boundary.

5. Agency Comments. By county law, the Department of Planning and Zoning (DPZ) does not issue a technical staff report or make recommendations for variance petitions on residentially zoned property. Agency comments are generally advisory and pertain to post-Hearing Examiner decision stages of development, except where the comments bear on compliance with the HCZR. The Hearing Examiner did not receive comments on this petition before the hearing.

#### CONCLUSIONS OF LAW

The standards for variances are contained in HCZR § 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 complies with §§ 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. Section 130.0.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. *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) (italics added).

Here, the presence of a stream and associated wetlands and buffers, together with the 40' fall in the northern section of the Property and its irregular shape are unique physical conditions causing practical difficulty in complying with the zoning district's bulk regulations. The extent of these physical conditions compel the need for the retaining wall variance and push the building envelope to the south and east. The petition accords 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 closest residence in Dorsey Crossing is some 100 feet from the nearest unit in the proposed development. There is no evidence that the requested variances would alter the essential character of the neighborhood or district or impair the use of development of adjacent property, the variances will increase the public welfare. The petition complies 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 Petitioner did not create the practical difficulties, which are attributable to unique physical conditions. The petition complies 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 proposed variances are for a reasonable use of the Property, an apartment complex. The petitioner complies with § 130.0.B.2.a(4).

ORDER

Based upon the foregoing, it is this 9<sup>th</sup> Day of May 2018, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Dorsey Overlook, LLLP, for variances to reduce the 30-foot use setback from an arterial public street ROW to 11.25 feet for a private road use and to reduce the 50'-foot project boundary setback to 20.0 feet, for an apartment building in an R-APT (Residential: Apartments) zoning district, is **GRANTED**;

**Provided, however, that:**

1. The variances shall apply only to the uses and structures as described in the petition as depicted on the Variance Plan and not to any other activities, uses, structures, or additions on the Property.
2. The Petitioner shall obtain all required permits.

HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER

  
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