

IN THE MATTER OF : BEFORE THE  
DARNESTOWN DEVELOPMENT LLC : HOWARD COUNTY  
Petitioner : BOARD OF APPEALS  
: HEARING EXAMINER  
: BA Case No. 12-025V

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**DECISION AND ORDER**

On April 11, 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 Darnestown Development, LLC requesting a variance to reduce the required 30-foot structure and use setback to 19 feet for a Day Care Center in a B-1 (Business: Limited) 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. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure.

Sang Oh, Esquire, represented the petitioner. Peter Stone testified on behalf of the petitioner. No one appeared in opposition to the petition.

Petitioner introduced into evidence the exhibits as follows.

1. Property location map
2. Map depicting vicinal commercially zoned properties
3. Map depicting the 3.1-acre Shipley's Grant development to the Property's southeast

4. Map enlargement depicting Property
5. Copy of Board of Appeals Case No. 99-039E&V

**FINDINGS OF FACT**

Based upon the evidence presented at the hearing, the Hearing Examiner finds as follows:

1. Property Identification. The property is located at the northeast side of MD 108 about 60 feet southeast of Montgomery Run Road. It is located in the 1<sup>st</sup> Election District, officially identified as Tax Map 37, Grid 1, Parcel 286 and is also known as 5633 MD 108 (Waterloo Road) (the Property).
2. Property Description. The irregularly shaped corner Property is 0.93 acres in size. It fronts about 192 feet on MD 108 and is currently improved with a residential structure and an accessory structure.
3. Vicinal Properties. The R-SA-8 (Residential: Single Attached) zoned Parcel A-1 to the northeast and northwest is a multi-family development. The closest apartment building lies about 140 feet from the Property's northeast property line, with a stormwater management pond sited between this building and the Property line. That portion of Parcel A-1 abutting the Property's northwest side is a 42-foot wide, wooded area. Further northwest, across Montgomery Run Road are R-20 (Residential: Single Family) zoned properties improved with single-family detached dwellings. On the southeast side is Parcel 287, a 0.80-acre B-2 zoned lot improved with a gasoline service station and convenience store approved by Board of Appeals case No. 99-39E&V and Site Development Plan 03-73. To the southwest, across MD 108, the R-20 zoned properties are each improved with a single-family detached dwelling.

4. Roads. MD 108 has one northbound travel lane with a designated right-turn lane and one southbound travel lane within a variable width right-of-way (ROW) in the area of the Property. There is a striped median lane between the north-and southbound lanes. According to State Highway Administration data, traffic volume on MD 108 west of MD 104 was 16,230 average daily trips as of 2011.

5. Sight Distance. Sight distance from the existing driveway is about 350 feet to the north and south.

6. Variance Request. Petitioner is intending to raze the existing structures and erect a 9,503-square foot day care center. A 5,555-square foot play area is proposed on the day care center's northeast side. Because the day care center building and play area (and what appears to be a sidewalk) would be located a maximum of 11 feet into the 30-foot structure and use public street ROW setback for Montgomery Run Road, Petitioner is seeking approval to reduce the setback to 19 feet.

Access from MD 108 is proposed via a 30-foot wide driveway located in the Property's southwest corner. The driveway would lead to a 32-space parking lot. An enclosed dumpster is proposed at the end of the parking lot. A 12'x20' storage shed would be located behind the dumpster pad. A six-foot high open picket fence would run along the northwest side, beginning at the front of the building to the rear property line, along the rear property line and then along a portion of the southeast property line.

7. Peter Stone testified that the B-1 zoned Property is somewhat small and irregularly shaped.

**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, 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.**

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 relatively small and irregularly shaped. Given the Property's unique physical conditions, the Hearing Examiner concludes the Property's unique shape and size causes practical difficulties in designing the day care center to comply with the public street ROW setback requirement imposed by Section 118.D.2.a, 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.**

In Board of Appeals Case No. 99-039E&V, the Board of Appeals approved multiple reductions in required structure and use setbacks for the adjoining gasoline service station, and the vicinal Shipley's Grant development on MD 108 has reduced setbacks, so the proposed reduction in this case will not alter the essential character of the neighborhood in which the lot is located. Additionally, a six-foot high open picket fence will buffer the use from adjacent properties. There is no evidence that the reduction would substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, 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 practical difficulties in complying strictly with the structure and use regulations arise from the Property's shape and size 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 proposed reductions are the minimum needed for the reasonably sized day care center. 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 18<sup>th</sup> Day of April 2013 by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the variance petition of Darnestown Development, LLC for a variance to reduce the required 30-foot structure and use setback to 19 feet for a Day Care Center in a B-1 (Business: Limited) Zoning District, is **GRANTED**;

**Provided, however, that:**

1. The variance shall apply only to the uses and structures as described in the petition and Variance Plan submitted on December 13, 2012, and not to any other activities, uses, structures, or additions on the Property.
2. The Petitioner shall provide landscaping in accordance with the Howard county Landscape Manual at the Site Development Plan stage.

**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.