IN THE MATTER OF	:	BEFORE THE
	:	HOWARD COUNTY
MILLINIUM MANAGEMENT CO., LLC	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 08-043V

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DECISION AND ORDER

On October 15, 2008, 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 Millinium Management Co., LLC, for variances to reduce building, use, dumpster and parking setbacks for a proposed hotel in a CE-CLI (Corridor Employment: Continuing Light Industrial Overlay) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

William E. Erskine represented the property owner. Sailesh Patel and Wayne Newton testified on behalf of the Petitioner. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property is situated on the west side of US 1 about 600 feet south of Guilford Road. It is located in the 6th Election District and identified on Tax Map 47, Block 12, as Parcel 502. The site is currently known as 8826 Washington Boulevard (the "Property").

2. The 2.34-acre Property is long and shallow, between 370 and 279 feet wide and about 223 feet deep. It is improved with a two-story commercial building of unknown use and which lies within the proposed US 1 right-of-way ("ROW"). The rear of the Property is partially wooded. The Property slopes down from its high point in the northeast corner to the low point in the southwest corner.

3. Vicinal Properties. To the west is the CE-CLI zoned Parcel 503, which is improved by a commercial building. Multiple R-12 zoned lots fronting on Glen Court also adjoin the Property along its rear lot line. All other adjacent properties are zoned CE-CLI. To the north is an unconfirmed gasoline service station subject to BA 97-28E&V and which lies within the ultimate US 1 ROW. Across US 1 to the east is a thrift shop. To the south is a hotel use constructed in the 1980s.

4. Roads. US 1 in front of the Property has a wide, variable right of way, dual northbound and southbound lanes, and a northbound right-turn lane to Guilford Road. According to State Highway Administration comments, US 1 has a 158-foot proposed ROW width. The estimated sight distance from the proposed northern driveway entrance is more than 800 to the north and south. Precise sight distance measurements may only be determined through a detailed sight distance analysis, however. There appears to be no sight distance issue at the signalized intersection with US 1.

According to data from the State Highway Administration, the traffic volume on US 1 south of Guilford Road was 34,860 ADT (average daily trips) as of 2007.

5. Water and Sewer Service. The site will be served by public water and sewer facilities.

6. General Plan. The Property is designated Residential Areas and Redevelopment Corridors on the Policies Map 2000-2020 of the 2000 General Plan. US 1 is depicted as an Intermediate Arterial on the Transportation Map 2000-2020 of the 2000 General Plan.

7. The Petitioner desires to construct a three-story, 90-room hotel with 89 parking spaces. Because most of the parking will be located to the hotel's rear, in accordance with the US 1 Corridor development concept, the building must be constructed almost to the US 1 ROW, some two feet from the 20-foot external public street ROW. The parking spaces to the sides of the hotel would have a zero-foot setback from the 40-foot external public street ROW. Additionally, the rear parking lot, fence, and trash receptacle enclosure would be located 37 feet into the 50-foot setback from the adjoining residential district.

8. The Petitioner is therefore seeking relief from (1) the Section 122.E.2.a(1)'s 20-foot structure and use setback from the public street ROW (the ultimate US 1 ROW) to allow the building to be sited two (2) feet from that ROW; (2) from Section 122.E.2.a(2)'s 40-foot public street ROW (the ultimate US 1 ROW) for parking, loading docks, outdoor storage, dumpsters and fencing and other uses to allow these uses to be sited zero (0) feet from that ROW, and; (3) from Section 122.E.2(c)(2)(b)'s 50-foot residential setback to allow the rear parking lot and a trash receptacle to be sited 13 feet from the adjoining residential properties.

9. Wayne Newton, the project engineer, agreed with and accepted the conclusions of the technical staff report ("TSR"). He also testified that the proposed ROW and adjoining residential properties exacerbate the shallowness of the lot and that residential properties do not generally abut most US 1-fronting commercial properties. Referring to Petitioner's Exhibit 1, several photographs of the Property and immediate neighborhood, he explained that the hotel would be set back farther from the US 1 ROW than the existing structure.

10. Sailesh Patel testified that the proposed hotel is relatively small, only 70 feet deep, which will permit two opposing rows of modestly sized rooms separated by a single internal hallway.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

> (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.
>
> (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.
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> (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 necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variances comply with Section 130.B.2.a(1) through (4) and therefore may be granted.

1. 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 already shallow Property will become more so upon the ultimate widening of US 1. I therefore conclude the Property's unique shape causes the Petitioner practical difficulty in complying with the setback requirements, in accordance with Section 130.B.2.a(1).

2. The proposed development will be sited further back from the travel lanes of US 1 than the existing structure and will have no negative effect on the adjoining commercial uses. The building will comply with the structure setback from the adjoining residential district and the building location will still allow for a reasonable landscape buffer. I therefore conclude the granting of the variances will not alter the essential character of the neighborhood or district in which the Property is located, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The property owner purchased the property in its current condition. The practical difficulty in complying strictly with the setback regulations arises from the Property's shape and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

4. The proposed hotel is of a reasonable size and configuration and the requested variances are reasonable considering all site constraints. 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 **27h day of October 2008**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Millinium Management Co., LLC, for variances from Section 122.2.E.2 to (1) reduce the 20-foot structure setback from the public street ROW from 20 to 2 feet; (2) reduce the front parking setback from 40 to zero (0) feet, and; (3) reduce the rear setback for parking, a trash receptacle enclosure, and a fence from 50 to 37 feet for the construction of a hotel development in a CE-CLI (Corridor Employment: Continuing Light Industrial Overlay) Zoning District is hereby **GRANTED**;

Provided, however, that the variances will apply only to the hotel, parking lot, trash receptacle enclosure and fence being requested and not to any new structures, uses, or change in uses on the subject property or to any additions thereto.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER

Michele L. LeFaivre

Michele L. LeFaivre

Date Mailed: 10/29/08

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.

IN THE MATTER OF	:	BEFORE THE
	:	HOWARD COUNTY
MILLINIUM MANAGEMENT CO., LLC	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	Modification Order in Relation to BA Case No. 08-043V

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ORDER MODIFYING BA CASE NO. 08-043V

On November 5, 2008, the Petitioner submitted a Request for a Modification of the Decision and Order dated October 27, 2008 in BA Case No. 08-043V, which decision and order was granted as supported by findings and facts set forth in the decision. The Petitioner is requesting that the decision and order be modified to include variance approval for a fence to be located 31 feet from the rear property line, not 37 feet as the Decision and Order approved, to vary by 19 feet the 50-foot setback required by Section 127.2.E.2c(2)(b).

I reviewed the file and testimony. The file includes a letter from the Petitioner's counsel, William E. Erskine, dated October 9, 2008, seeking to amend the petition to include a setback variance for the proposed fence location. The letter is a response to the Technical Staff Report's ("TSR") observation that the variance plan portrays an eight-foot solid board on board fence about 31 feet from the residential setback, a 19-foot encroachment into the 50-foot setback under Section 127.2.E.c(2)(b) of the Zoning Regulations. The fence's location was also discussed at the hearing.

Hearing Examiner Rule 11.5 permits me to modify a decision only upon a finding of mistake of fact or mistake of law. The Order approves a variance for "a fence from 50 to **37** feet for the construction of a hotel development in a CE-CLI (Corridor Employment: Continuing

Light Industrial Overlay) Zoning District." The Hearing Examiner misread the setback on the variance plan. The 37-foot setback noted on the plan does not refer to the fence, but to the parking setback. Apparently, there is no note on the plan indicating the proposed fence's setback. Nonetheless, the Petitioner's letter amending the plan clearly relies on the TSR observation that the fence is about 31 feet from the rear property line.

Based upon the foregoing, it is this **6th day of November 2008,** by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Order in BA Case No. 08-35C is **MODIFIED** as follows.

That the Petition of Millinium Management Co., LLC, for variances from Section 127.2.E.2 to (1) reduce the 20-foot structure setback from the public street ROW from 20 to 2 feet; (2) reduce the front parking setback from 40 to zero (0) feet; (3) reduce the rear setback for parking and a trash receptacle enclosure from 50 feet to 13 feet from the adjoining residential properties; and (4) reduce the 50-foot structure and use residential setback to 19 feet for a fence (permitting a fence to be constructed 31 feet from the rear property line instead of the 50-foot setback required by Section 127.2.E.2.c(2)(b)), for the construction of a hotel development in a CE-CLI (Corridor Employment: Continuing Light Industrial Overlay) Zoning District is hereby **GRANTED**;

Provided, however, that the variances will apply only to the hotel, parking lot, trash receptacle enclosure and fence being requested and not to any new structures, uses, or change in uses on the subject property or to any additions thereto.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER

Michele L. LeFaivre

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