

IN THE MATTER OF : BEFORE THE  
7024 CEDAR AVENUE LLC : HOWARD COUNTY  
Petitioner : BOARD OF APPEALS  
: HEARING EXAMINER  
: BA Case No. 15-017V

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**DECISION AND ORDER**

On July 13, 2015, 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 7024 Cedar Avenue, LLC (Petitioner) for a variance to reduce the 20-foot structure side setback from a public street right-of-way (ROW) to 7.5 feet for a proposed single-family detached dwelling in an R-12 (Residential: Single Family) Zoning District, filed pursuant to Section 130.0.B.2 of the Howard County Zoning Regulations (HCZR).

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. Howard Alderman, Esquire, represented the Petitioner. Jakob Hikmat testified in support of the petition. Brock Morgan and Matthew Westbrook testified in opposition to the petition.

The Petitioner introduced into evidence these exhibits.

1. Variance plan, February 2015
2. Deed, 7024 Cedar Avenue
3. Board of Appeals Case No. 13-023V, October 13, 2013

**FINDINGS OF FACT**

Based upon the petition, the variance plan and the evidence presented at the hearing, the Hearing Examiner finds as follows:

1. Property Identification. The subject property is located on the southwest corner of the Cedar Avenue intersection with Linden Avenue. The property lies in the 1<sup>st</sup> Election District and is identified as Tax Map 0043, Grid 0006, Parcel 0306, Lots 570 & 571 and is also known as 7024 Cedar Avenue (the Property).

2. Property Description. The 7,500-square foot, rectangular Property comprises two lots in the Lennox Park subdivision (Lots 570 & 571). Each lot is 25 feet wide and 150 feet deep. The northwesterly property line abuts Linden Avenue. The southwesterly property lot abuts Cedar Avenue. The Property is currently vacant. Each 3,750sf lot is substandard to the R-12 district, which requires a 12,000sf minimum lot size (HCZR § 109.0.D.2) and a 60-foot minimum lot width at the building restriction line (HCZR § 109.0.D.4.b(1)(a)).

3. Adjacent Properties. Adjacent properties are also zoned R-12 and are generally improved with single-family detached dwellings on multiple lots. Some lots appear to be unimproved, although they may actually be the side or back yards for dwellings on separate lots. During site visits to the Lennox Park subdivision, the Hearing Examiner observed redevelopment with single-family detached dwellings.

4. The Requested Variance. Petitioner is proposing to construct a 35-foot wide, 21-foot high, single-family detached dwelling with an attached garage and optional morning room on the Property. Owing to the Property's substandard size and width, which results in a long, narrow Property, Petitioner is requesting a variance from HCZR § 109.D.4.b.(1)(a) to reduce the 20-foot structure side setback from a public street ROW to 7.5 feet.

5. Jakob Hikmat testified to being a professional civil engineer and president of the firm that prepared the variance plan. The variance plan submitted with the petition and introduced as Petitioner Exhibit 1 was prepared under his supervision. The Property consists of two lots created around 1906, before the advent of zoning in Howard County. As combined, the two lots are 7,500sf in area. Despite the combined lots, the Property is still narrow and substandard to the HCZR. A house on the Property was razed. Petitioner introduced through Mr. Hikmat a copy of the deed transferring ownership of the Property to 7024 Cedar Avenue, LLC. Exhibit 2.

6. Mr. Hikmat further testified to the Property being a corner site abutting two public streets, Lennox Avenue and Cedar Avenue, which under HCZR § 109.D.4.b.(1)(a) increases the proposed dwelling's side setback from 7.5 feet to 20 feet. A 20-foot setback makes the first lot (along Lennox Avenue) unusable. When the two lots are combined, the 20-foot setback, together with the required 7.5-foot side yard setback on the southwesterly lot line, would result in a narrow house, 22.5 feet, which is not in harmony with the rest of the neighborhood. The variance request is for the same 7.5-foot side setback as on the other side. This setback is consistent with other corner lot setbacks in older area subdivisions, some of which exist

without variances and others with variances. In his professional opinion, the requested variance meets all four standards for granting a variance. There were no negative agency comments on the requested variance.

7. Mr. Hikmat also testified to being familiar with many properties in older subdivisions where similar variances have been granted. He worked on a variance petition in Howard Park. Referring to Petitioner Exhibit 3, a copy of Board of Appeals Case No. BA 13-023V (decided October 13, 2013) and the variance plan submitted with that petition, he testified the Hearing Examiner granted a reduction in the 20-foot setback from a public street ROW to 7.5 feet for a semi-attached dwelling. The corner Property in that case comprised two, 25'x125' lots.

8. Brock Morgan testified to residing on Lennox Avenue (one street over). He cross-examined Mr. Hikmat about the width of Cedar Avenue, which Mr. Hikmat thought was about 20 feet wide. One driveway is proposed. No street parking is expected; two parking spaces are proposed in the driveway and two spaces in the garage. If there were a party, some people might park on the street. When asked about how two cars would pass with on-street parking, Mr. Hikmat replied he did not know. There might be some difficulty because the subdivision is older. He did not test the sight lines north and south of Cedar Avenue. When crossed about the developer having created the need for the variance when he bought the lots, Mr. Hikmat explained there was one house on four lots. The Petitioner did not create the situation by buying four lots. Four lots means you have the right to create four homes. When asked if the previous dwelling on the four lots and other dwellings on other lots create violations, Mr.

Hikmat replied they did not, because they were built before the county zoning regulations. He is not sure if there is still an access on Cedar Lane, to which Mr. Morgan replied the previous driveway was off Linden Avenue.

9. In Mr. Morgan's direct testimony, Mr. Morgan testified to building a new house on Lennox Avenue, which required a site development plan and took three years. He sees other houses in the subdivision being developed in less than a year with lots of exceptions, which he finds frustrating because he feels like he was subjected to a higher standard than a professional builder is. He believes it is just a matter of time before all the older homes are replaced with new homes. He objects to the way all the development is happening. Specimen trees were taken down on the Property, which has been leveled and graded. On cross, Mr. Morgan testified that when the old house was there, drivers still had to pull over when two cars passed on Cedar Avenue but at this particular location, there is a hill requiring you to look out for cars.

10. Matthew Westbrook testified to having resided on Lennox Avenue on the opposite corner of the same block for 25 years. He frequently walks the neighborhood with family and they enjoy the character of the neighborhood. He enjoys the setbacks from the road. He believes the owner knew a variance would be needed when he purchased the Property. Mr. Westbrook wants to go on record as objecting to the variance.

11. On rebuttal, Mr. Hikmat testified the ROW setback is measured not by the hard surface but from the ROW. There is no application (on file) for a building or grading permit. A building permit application would require sight line testing at site development plan (SDP) and the plan

would meet sight line distances. Mr. Morgan objected to the answer, because there is no SDP in process. When questioned by the Hearing Examiner, Mr. Hikmat did not know if an SDP would be required. If more than 5,000sf is disturbed, then it would. County reviewers would have to look at these things, even if a plot plan is submitted. Mr. Morgan contended no SDP was required for any of the new homes built in Lennox Park so he is concerned about a dangerous situation being created for the neighborhood. Mr. Hikmat replied that any sight distance issue is a result of existing roads. Whatever the developer does would not change the sight distance.

#### **CONCLUSIONS OF LAW**

The standards for variances are contained in HCZR § 130.B.2.a. This section authorizes the Hearing Examiner to grant a variance only if all of the following determinations are made. Based upon the foregoing Findings of Fact, and for the reasons stated below, the Hearing Examiner finds the requested variance complies with §§ 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.**

Compliance with this first standard is tested through a two-step process. First, the property must manifest some unique physical condition, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography. Second, this unique condition must impact the property disproportionately 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).

The Property is a corner site subject to the R-12 district requirement of a 12,000 minimum lot size (HCZR § 109.0.D.2) and a 60-foot minimum lot width at the building restriction line (HCZR § 109.0.D.4.b(1)(a)). Each lot separately is rendered unbuildable through the action of these regulations. Even with the combination of two lots, the Property is narrow. A variance is required for any reasonably sized single-family dwelling. The Hearing Examiner concludes the Property's shape and size is a unique physical condition causing the Petitioner practical difficulty in complying with the setback requirement, in accordance with HCZR § 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.**

The proposed detached dwelling is a permitted use. As the evidence shows, and as the Hearing Examiner observed during her site visit, the neighborhood consists of a broad variety of lot sizes and shapes. The Hearing Examiner acknowledges Mr. Morgan and Mr. Westbrook's concerns about older homes being replaced with new homes, and enjoying the setbacks, but the arrival of new homes in the Lennox Park subdivision is a broader concern than the Hearing

Examiner may consider here. Mr. Morgan himself testified to building a new home in Lennox Park, which required an SDP because the development disturbed more than 5,000sf.

When considering the petition under this standard the issue is narrow: does a 7.5-foot setback from a public street ROW for a single-family detached dwelling instead of the required 20 feet alter the essential character of the neighborhood or district in which the lot is located, or would it substantially impair the appropriate use or development of adjacent property? The answer is no. There is no evidence the 7.5-foot setback will alter the essential character of the neighborhood or district, or substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare, in accordance with HCZR § 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 difficulty in complying strictly with the setback regulation arises from the shape and size of the Property and was not created by the Petitioner, in accordance with HCZR § 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 dwelling shown on the variance plan is a reasonable size. Within the intent and purpose of the regulations, then, the variance is the minimum necessary to afford relief, in accordance with HCZR § 130.B.2.a.(4).



**ORDER**

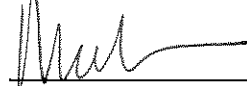
Based upon the foregoing, it is this **27<sup>th</sup> Day of August 2015**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of 7024 Cedar Avenue, LLC for a variance to reduce the 20-foot structure side setback from a public street right-of-way to 7.5 feet for a proposed single-family detached dwelling in an R-12 (Residential: Single Family) Zoning District is **GRANTED**;

**Provided, however, that:**

1. The variance shall apply only to the uses and structures as described in the petition submitted 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:** \_\_\_\_\_

8/27/15

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 calendar 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.