

IN THE MATTER OF : BEFORE THE
JOHN M. WHITTINGHAM & : HOWARD COUNTY
WANDA L. FORREST : BOARD OF APPEALS
Petitioner : BA Case No. 19-001V

DECISION AND ORDER

The Howard County Board of Appeals convened on September 19, 2019 to deliberate on the petition of Jon M. Whittingham & Wanda Forrest (Petitioners) for a variance from Section 128.0.A.12.(1)(a) of the Howard County Zoning Regulations (HCZR) to increase the maximum cumulative accessory structure lot coverage on a property in the R-20 (Residential: Single) zoning district, filed pursuant to § 130.0.B.2 of the HCZR.

Board members James Howard, Neveen Kurtom, John Lederer, Steven Hunt and William Santos listened to the recording of the June 24, 2019 hearing held before the Howard County Hearing Examiner and reviewed all the evidence submitted at that hearing. Barry M. Sanders, Assistant County Solicitor, served as legal advisor to the Board.

The Board members indicated that they had viewed the property as required by the zoning regulations. The Petitioner certified to compliance with the notice and posting requirements of the Howard County Code.

The Petitioner was represented by Thomas M. Meachum, Esquire. Jon M. Whittingham testified in support of the petition. No one appeared in opposition to the petition.

The Petitioner introduced into evidence the exhibits as follows:

1. Photograph of the Storage Shed and the Tractor Shed on the Petitioner property; and
2. Aerial photograph of the vicinity of the Petitioner property.

FINDINGS OF FACT

Based upon the evidence of record, the Board finds as follows:

1. Property Identification. The subject property is identified as Tax Map 46, Grid 9, Parcel 47 and known as 11497 Harding Road, Laurel, Md. 20723 (the Property).

2. Property Description. The house sits on a 12.83-acre piece of property with flat areas and some rolling hills. Petitioner owns a piece of property immediately to the east, Lot 109, which is a 56,001 square foot lot, or 1.28 acres. No accessory structures are allowed on the second lot. Both lots are zoned R-20. The residence is located toward the rear of the lot and is mostly out of sight from Harding Road. The existing sheds are located 155 feet west of the house. The northeast side of the property is flat and has a very large front yard area. The closest neighbor/residence to the northeast is 533 feet away and the closest neighbor/residence to the northwest is approximately 615 feet away. According to the Petitioner, neither of these two residents can see the house and accessory structures through the forest in the summer. The property contains a significant number of mature trees. The land is owned by Jon Whittingham and Wanda Forrest and protected by an Easement held by the Maryland Environmental Trust (MET). The *Deed of Conservation Easement*, dated December 7, 1990, permits the owners of the property: (1) to construct accessory structures designed, constructed, and utilized for the purpose of serving the existing residence; (2) to construct accessory structures designed, constructed, and utilized in connection with the agricultural, horticultural, forestry, and naturalistic uses of the property; (3) to replace all existing permitted structures; and (4) to improve, repair, restore, alter, make additions to, and maintain all structures permitted. The property was created and put into an Easement held by Maryland Environmental Trust to preserve the land surrounding Rocky Gorge Reservoir (Patuxent River).

The Petitioner explains that the previous owner wanted to conserve the natural and scenic qualities of the environment with the purpose of conserving the dominant scenic, cultural, rural, agricultural, woodland, and wetland character of the property. According to the Petition, the current owners are committed to those same goals and intend to conserve the property. The property does not resemble either of the subdivisions that surround it. At 558,990 square feet, the Property is more than 13 times larger than the largest abutting property, at 43,560 square feet.

3. Vicinal Properties. All adjoining properties are zoned R-20. To the north and east of the property are single family detached dwellings in two subdivisions. To the west and south of the property are non-Howard County owned parklands.

4. The Requested Variance. The Petitioner is requesting a variance to increase the maximum cumulative accessory structure lot coverage on a property located in the planned public water and sewer service area from 600 square feet to 1,198 square feet. In the section explaining the nature of the request, the petition states in pertinent part as follows:

The Storage Shed is 11' x 30' and is approximately 366 square feet. This is a newer shed, only 20 years old. This Storage Shed contains all the woodworking equipment, electrical scaffolding, power tools, pool storage equipment, and table saws, etc., necessary to maintain and home the property. The Petitioners would like this shed approved.

The Tractor Shed is 11' x 24' and is approximately 264 square feet. This is a 45-year-old structure and the wood is rotting away in various parts and is far too small to hold all the lawn equipment. It is completely full to the point of someone not being able to move around inside the shed safely. The Petitioner's intention is to replace this Tractor Shed with a larger utility shed of 832 square feet.

...

The new utility shed will provide the homeowners a much larger structure to park and store their lawn equipment and provide additional space in the upper attic section for storage. A simple workbench area inside the shed is needed to maintain the landscaping hardware....The old wooden shed is rotting and does not have the storage volume to house

the equipment and hardware needed to maintain the property....Lawn maintenance hardware is currently left outside because there is no place to store the items....The added space of the new structure will ensure the Petitioners can properly maintain the property, buy accessory equipment as needed, properly store lawn seed and fertilizer, and store the equipment in a safe and secure area out of sight from visitors and nearby residents....

Assuming an 832 square-foot utility shed structure is added as proposed (replacing the old Tractor Shed) and retaining the existing second Storage Shed (11' x 30'; 366 sf), the total accessory structure space Petitioners are requesting is 1198 square-feet.

CONCLUSIONS OF LAW

The standards for variances are contained in HCZR § 130.B.2.a. Pursuant to this section, the Board 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 Board 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 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).

In this case, the Property is unusual or different from the nature of the surrounding properties. As discussed above, the property is 12.83 acres, which is unusually large and unique with an extensive front yard, relative to the properties in the adjacent subdivisions. The driveway is approximately 750 feet in length from Harding Road to the end of the paved asphalt. According to the Petitioner, there are no other properties north, west, or east within a mile that are similar in size and scale. The Petitioner explains that the lot is approximately 10 to 13 times larger than the average lot of 35,000 square feet in the adjacent neighborhoods. The size of the lot provides ample land space for a larger detached utility shed. The shed will not appear out of scale due to the large size of the 6,344 square feet house. The proposed shed will be located on the same land as the existing shed that is located nearly 155 feet from the main house. The petitioner states that "...barns and other utility sheds/garages in the surrounding community are larger than the ones Petitioners are seeking approval for." Given the unique size and other physical conditions of the Property, practical difficulties arise in complying strictly with the bulk provisions of the HCZR due to the lack of current adequate storage space for the type and amount of equipment needed to properly maintain the Property. For these reasons, the petition accords with § 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 shed will be built on the location of the smaller existing Tractor Shed that it will replace. The house and the two existing sheds are located on the rear of the property, which is the portion of the property furthest away from the adjacent properties. There is no evidence of the variance altering the essential character of the neighborhood or district in which the lot is located, substantially impairing the appropriate use or development of adjacent property or being detrimental to the public welfare in accordance with § 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 with the accessory lot coverage structure regulations arises from the large size of the property and the amount of shed space needed to store the hardware and agricultural equipment that is required to properly maintain the property. The Petitioner/property owner did not create the practical difficulties or hardships, in accord with § 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 requested variance is to increase the maximum cumulative accessory structure lot coverage on a property located in the planned public water and sewer service area that is zoned R-20 from 600 square feet to 1,198 square feet to allow for the addition of an 832 square foot utility shed structure that is replacing the old Tractor Shed and the retention of an existing 366 square foot storage shed. The estimated total lot coverage is approximately 0.15% of the overall land. The request is for a reasonably-sized utility shed structure to provide the necessary storage space in combination with an existing storage shed to hold the hardware and agricultural equipment that is necessary to maintain the property, and therefore the minimum necessary to afford relief. The petition accords with § 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this 19th Day of September 2019, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Jon M. Whittingham and Wanda Forrest for a variance to increase the maximum cumulative accessory structure lot coverage on a property located in the planned public

water and sewer service area that is zoned R-20 from 600 square feet to 1,198 square feet is hereby **GRANTED.**

Provided, however, that:

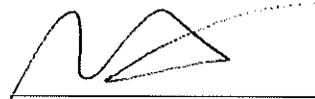
1. The variance shall apply only to the structures described in the petition and shown on the variance plan.
2. Petitioner shall comply with all federal, state, and county laws and regulations.
3. Petitioner shall obtain all required permits.

ATTEST:

HOWARD COUNTY BOARD OF APPEALS


Robin Regner, Secretary

ABSENT
James Howard, Chairperson


Neeven Kurtom, Vice-Chairperson

PREPARED BY:
HOWARD COUNTY OFFICE OF LAW
GARY W. KUC
COUNTY SOLICITOR


John Lederer


Barry M. Sanders
Assistant County Solicitor


Steven Hunt


William Santos