

IN THE MATTER OF	:	BEFORE THE
B. Domowski t/a	:	HOWARD COUNTY
Maryland Decking	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA CASE NO. 20-018V

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DECISION AND ORDER

On April 20, 2021, 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 B. Domowski t/a Maryland Decking (Petitioner) for a variance to reduce the 30 foot rear yard setback for a principal structure to 14 feet in order to construct a deck and stairs to a detached dwelling in the R-20 (Residential: Single) Zoning District, filed pursuant to Section 130.0.B.2 of the Howard County Zoning Regulations (the HCZR) for a variance from Section 108.D.4.c.(1)(c)(i).

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. The Petitioner was not represented by counsel. David Boswell t/a Maryland Decking (Petitioner), Patricia Feurer (Property Owner), Kathryn Woody, and Helen Bojko testified in support of the Petition. No one appeared in opposition to the Petition. Petitioner provided the following exhibits:

Petitioners Exhibit 1: Photo of the exterior rear stairs accessing the sub-basement

Petitioners Exhibit 2: Photo of the rear of the dwelling

FINDINGS OF FACT

Based upon the evidence of record, the Hearing Examiner finds as follows:

1. Property Identification and Description. The approximately 0.1641-acre property is located on the north side of Overlook Drive, east of its intersection with Old Columbia Pike. The subject property lies in the 2nd Election District, is identified as Tax Map 0025, Grid 13, Parcel 327, and is known as 4025 Overlook Drive, Ellicott City, Maryland (the Property). The lot is roughly rectangular in shape, is very narrow, and the existing single family detached dwelling is located to the rear of the lot. The lot is much smaller than other lots in this neighborhood. The topography slopes rapidly away from the right front of the lot to the left rear, a 5-foot decrease in elevation, which results in a walkout first floor/basement. There is also a beneath ground level sub-basement. There is a row of very tall evergreens across the rear of the lot buffering the subject home from its neighbor to the rear. The Property is improved with a single-family detached dwelling which has 2 sliding glass doors on the rear of the second floor (from the rear of the Property due to the extreme slope) which are unusable due to the sloping yard. The rear yard is enclosed with a 6-foot sight tight privacy fence. The Property Owner purchased the 1,506 square foot dwelling in 2002.

2. Adjacent Properties. Adjacent properties are also zoned R-20 and are developed and utilized with single-family detached dwelling units.

3. The Requested Variance. The Petitioner is proposing to construct an approximately 355 square foot deck with 2 16 square foot landings and stairs. The proposed deck is approximately 12 feet wide and 29 feet 6 inches deep to be located 16 feet within the rear yard building restriction setback on the Property. The deck will not be visible from any dwelling or street. Although zoning by plebiscite is not permitted in Maryland, it is noted that all of the adjacent property owners are aware of and are in support of the instant Petition.

4. Agency Comments. The Bureau of Environmental Health, the Maryland Department of Transportation/ State Highway Administration, the Department of Recreation and Parks, the Department of Fire and Rescue Services, the Development Engineering Division, the Resource Conservation Division and the Division of Public Service and Zoning Administration, all had no comments or no objection to the proposed variance.

CONCLUSIONS OF LAW

The standards of variances are contained in HCZR Section 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 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.

Compliance with the 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).

The Property is developed with an existing single family detached dwelling which is located towards the rear of the property adjacent to the 30-foot rear building restriction line, creating a much larger front yard than other lots in the neighborhood. The lot itself is much smaller in size than surrounding lots in the neighborhood. The Property has a 5 foot decrease in elevation from the front of the dwelling unit to the rear of the dwelling unit creating a walkout ground level first floor/basement and a second floor main level when viewing the home from the rear. The severe topography, the small size and narrowness of the lot, and the location of the existing dwelling on the rear building restriction line makes it impractical to locate the deck in another portion of the Property and are unique physical conditions causing the Petitioners practical difficulty in complying with the bulk area requirements for the deck 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.

The deck will be used for a permitted purpose. As the evidence shows, and as the Hearing Examiner observed, the neighborhood along Overlook Drive consists of generally rectangular lots with dwellings oriented towards the street frontage. The construction of a deck to the rear of the dwelling will not be a visual incursion into neighboring homes and will improve the functionality of the dwelling which currently has 2 sliding glass doors on the rear of the dwelling which are not accessible due to the severe slope which places the sliding doors on the second story at the rear of the dwelling. The deck will correct a fire safety and public welfare situation by creating a second access from the main living area of the dwelling. The proposed deck will not be visible from any dwelling or street and is architecturally compatible with the neighborhood. None of the neighbors appeared in opposition. The variance, if granted, will therefore not alter the appropriate use or

development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 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 practical difficulty in complying strictly with the bulk regulation requiring a 30 foot rear yard setback arises from the Property's narrow shape, small lot size, and severe topography, and was not created by the Property Owner who purchased the dwelling unit in 2002, in accordance with Section 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 deck is architecturally compatible with the neighborhood and will not be visible from any dwelling or street. David Boswell t/a Maryland Decking testified that a 12-foot-wide deck is the minimum width needed to maintain functionality and flow for a table and chairs and other deck furniture. The proposed deck is 12 feet wide. Within the intent and purpose of the regulations, then, the variance is the minimum necessary to afford relief, in accordance with Section 130.0.B.2.a.(4).

ORDER

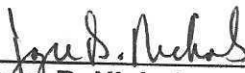
Based upon the foregoing, it is this 20th day of April, 2021, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of B. Domowski t/a Maryland Decking for a variance to decrease the 30 foot rear yard setback to 14 feet, to include a 355 square feet deck addition to a single-family detached dwelling, in a R-20 (Residential: Single)) Zoning District, is hereby **GRANTED;**

Provided, however, that:

1. The variance shall apply only to the addition as described in the Petition and Plan submitted and not to any other activities, uses, structures, or additions on the Property.
2. Petitioner shall obtain all necessary permits.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER



Joyce B. Nichols

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.