

IN THE MATTER OF : BEFORE THE
MARYLAND HOME PARTNERS, LLC : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 13-023V

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DECISION AND ORDER

On September 30, 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 Maryland Home Partners, LLC for a variance to reduce the side structure setback from a public street right-of-way from 20 feet to 7.5 feet for a proposed semi-attached dwelling in an R-12 (Residential: Single Family) 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 requirement of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure.

Dylan Springmann, Esquire, represented the Petitioner. Jakob Hikmat testified in support of the petition. No one testified in opposition to the petition.

The Petitioner introduced into evidence the exhibits as follows.

1. Property location map
2. Board of Appeals Case No. 12-001V

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	:	BA Case No. 12-023V
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FINDINGS OF FACT

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

1. Property Identification. The subject property lies in the 1st Election District and is identified as Tax Map 38, Grid 13, Parcel 873, Lots 387 and 388 and is also known as 6404 Euclid Avenue (the Property).

2. Property Description. The 6,000-square foot, rectangular shaped property is located on the southwest corner of the Melrose intersection with Euclid Avenue and comprises two lots in the Harwood Park subdivision (Lots 387 and 388). Each lot is 25 feet wide and 120 feet deep. The southwesterly property line abuts a 10-foot alley. The Property is unimproved. A few trees dot the alley lot line and there are a few trees in the northeasterly corner. Each 3,000-sq. ft. lot is substandard to the R-12 district, which requires a 12,000 minimum lot size and 60-foot lot width.

3. Adjacent Properties. Adjacent properties are also zoned R-12. The property to the southeast is unimproved. Across the alley to the southwest, are two single-family dwellings on double lots. The dwelling on the corner of Melrose and Beechfield Avenues fronts on Melrose Avenue. The other properties across Melrose and Euclid Avenues are improved with various types of single-family dwellings.

4. The Proposal. Petitioner is proposing to construct a semi-detached dwelling with a basement on the Property. Owing to the lot's small and narrow configuration, Petitioner is seeking a variance from Section 109.D.4.b.(1)(a) to reduce the side lot line setback from 20 feet to 7.5 feet.

5. During site visits to the Harwood Park subdivision, the Hearing Examiner observed its redevelopment with various dwelling types, including semi-detached. The Hearing Examiner also took notice that she has approved multiple variances for semi-attached dwellings in the Harwood Park subdivision.

6. Jakob Hikmat introduced into evidence a copy of Board of Appeals Hearing Examiner Decision and Order BA 10-001V, decided March 12, 2012, wherein the Hearing Examiner granted a reduction in the public street right-of-way from 20 to 7.5 feet for a corner property in the Harwood Park subdivision.

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, the Hearing Examiner finds 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 long and narrow, with the effect that the 20-foot public street setback reduces the size of the building envelope available for a reasonably sized dwelling. Consequently, 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 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 proposed semi-attached dwelling will be used for a permitted purpose. As the evidence shows, and as the Hearing Examiner observed, the neighborhood consists of a broad variety of lot sizes and shapes and dwelling styles and shapes. Many homes in Harwood Park are situated on corner lots with minimal space between them and local roads. The variance, if granted, will therefore not alter the essential character of the neighborhood in which the lot is

located nor 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 difficulty in complying strictly with the setback regulation arises from the shape of the lot and was 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 dwelling 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 Section 130.B.2.a.(4).

ORDER


Based upon the foregoing, it is this 7th Day of October 2013, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Maryland Home Partners, LLC, for a variance to reduce the 20-foot setback from a public street right-of-way to 7.5 feet for a proposed semi-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. LeFavre

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.