

IN THE MATTER OF : BEFORE THE
KEN YATES : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
 : HEARING EXAMINER
 : BA Case No. 13-022V

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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, the Hearing Examiner heard the petition of Ken Yates for a retroactive variance to reduce the side setback from 7.5 feet to one foot for a retaining wall in an R-SC (Residential: Single Cluster) 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 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. Ken Yates testified on his own behalf. No one appeared in opposition to the petition.

The Petitioner introduced into evidence the exhibits as follows.

1. An Elevation Map
- 2A-G. Photographs of the retaining wall and topography

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, the Hearing Examiner finds the following facts:

1. Property Identification. The subject property is located on the north side of Hicks Road approximately 540 feet northwest of Charles Joyner Drive. It is officially identified as Tax Map 43, Grid 14, Parcel 211, Lot 170 and is also known as 8170 Hicks Road (the Property).

2. Property Description. The 6,016 square-foot, irregularly shaped Property is improved by a two-story single-family dwelling located in the general center of the lot and fronting on Hicks Road. A curving retaining wall is located to the northwest of the dwelling's rear western corner. The wall is one foot from the western lot line at its closest point.

3. Vicinal Properties. All adjacent properties are also zoned R-SC. With the exception of the southern property, the site of a religious facility, all adjacent properties are improved with a single-family detached dwelling.

4. Variance Request. The Petitioner is seeking a variance from Section 110.D.4.b.(1)(a) of the Zoning Regulations to reduce the 7.5 side setback to one foot for the retaining wall.

5. Mr. Yates testified that the property on the side of the retaining wall (Lot 111) is higher in elevation than the Property. Petitioner's Exhibit 1 depicts the elevation difference, which is as much as eight feet. The approved site development plan originally called for a retaining wall less than three feet in height, and would be located extremely close to the house. Mr. Yates further testified to subsequently receiving a grading easement on the adjoining property, which was necessary to move the retaining wall further from the house.

Existing elevations, the adjoining neighbor's desire to have a mowable area on the other side of the retaining wall and compliance with grading and steep slope requirements dictated the size and location of the retaining wall.

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, not only is the Property uniquely shaped, but the topography produces a significant grade change between it and Lot 111. The Hearing Examiner concludes the Property's shape and topography causes practical difficulties in complying with the setback requirements, 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 retaining wall and requisite grading is designed such that the requested variance does not alter the essential character of the neighborhood or district in which the lots are located, as demonstrated by the photographs comprising Petitioner's Exhibit 2. The variance therefore will 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 difficulties in complying strictly with the setback regulation arise from the Property's shape and natural topographic features and were 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 reduction is the minimum for a retaining wall. 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 petition of Ken Yates for a retroactive variance to reduce the side setback from 7.5 feet to one foot for a retaining wall in an R-SC (Residential: Single Cluster) 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 as testified to, and not to any other activities, uses, structures, or additions on the Property.
2. The Petitioner shall obtain all necessary permits.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

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.