

IN THE MATTER OF : BEFORE THE
Kevin Becraft : HOWARD COUNTY
Petitioner : HEARING EXAMINER
: Case No. BA-19-036V

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DECISION AND ORDER

On June 15, 2020, the undersigned, serving as the Howard County Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Kevin Becraft, Petitioner, for four separate variances:

1. From Section 104.0.E.4.a.(3)(c)1 of the Zoning Regulations to reduce the required 30-foot side structure setback to 1 foot for existing Barn #1¹;
2. From Section 104.0.E.4.a.(3)(c)1 of the Zoning Regulations to reduce the required 30-foot side structure setback to 28 feet for existing Barn #2;
3. From Section 104.0.E.4.a.(4)(c) to reduce the required 10-foot rear setback to 7 feet for existing Barn #1; and
4. From Section 128.0.A.12.a.(1)(c) to increase the maximum accessory structure lot coverage from 2,200 square feet to 3,419 square feet.

The property is identified as Tax Map 2, Grid 19, Parcel 100 and the address is 17425 Frederick Road (the "Property"). The Property is in the RC-DEO (Rural Conservation – Density Exchange Overlay) zoning district and is approximately 5.8 acres. The Petitioners provided certification that notice of the hearing was advertised and certified that the property was posted as

¹ There are three (3) structures for which variances are granted. They are referred to in the Variance Plan dated 12/16/19 which was submitted with Petition as Barn #1, Barn #2 and Barn #3. They will be referenced the same herein.

required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioners were represented by Jennifer R. Busse. No one appeared in opposition to the Petition.

EVIDENCE

A. **Documents.** In addition to the Petition and accompanying documents filed therewith, the following documents were admitted into the record:

1. Ex 1 -- SDAT Sheet for subject property 17425 Frederick Road
2. Ex 2 -- Photos
3. Ex 3 -- SDAT Sheet for adjacent property 17415 Frederick Road
4. Ex 4 -- Plat 22714 (for adjacent property)
5. Ex 5 -- Petition of support
6. Ex 6 -- Richard Williams' C.V.
7. Ex 7 -- Aerial

B. **Testimony.**

Kevin Becraft, the Petitioner, testified on his own behalf. Mr. Becraft stated that he and his wife purchased the Property in 2016. He said that the outbuildings interested him because he liked the fact that he would have a space to store his tools and have a woodshop. He stated that Barn #3 is a chicken coop. Barn #1 is used to store his lawn mower, tools, saws, etc. Barn #2 is the structure he plans to use for his woodshop to store wood, tools, etc. Mr. Becraft is a builder. He testified that

Barn #2 was in significant disrepair and that when he started working to improve it, the wall collapsed so he decided to remove the building altogether. He installed new footers and rebuilt the structure. In the rebuilding process Petitioner decided to add additional space in the attic of the barn by installing living storage trusses, thus greatly increasing the area available for use. It was when he sought a permit for Barn #2 that Howard County inspectors visited the site and determined that the structures were in violation of the zoning regulations and issued a stop work order.

Richard Williams, a Principal with Development Design Group, Ltd., also testified for the Petitioner. Mr. Williams is an experienced land development professional with significant experience working on Howard County projects. His firm prepared the Variance Plan submitted with the Petition.

Mr. Williams testified that the three barns at the rear of the Property appear to have been in existence since some point in the 1980s, based on his review of aerial photographs of the Property. Mr. Williams stated that in his view the intent of the regulations would be met if a variance was granted because the property to the east and south cannot be developed due to constraints on those parcels. Mr. Williams stated that there is nothing to prevent the Petitioner from building the same structures on the Property within the setbacks (except that the structures together exceed the 2000 SF maximum for accessory structures and thus a variance would be necessary anywhere on the Property if the size of the structures remained the same as they are currently).

Mr. Williams stated that he did not believe there would be any detrimental impact to any vicinal properties if the variances were granted. Mr. Williams stated that in his view the Property is

unique because it is approximately 6 acres whereas the zoning district requires only a minimum of 3 acre lots. He stated that with a larger lot, there is a need for more square footage in accessory structures. He also stated that the Property is long and narrow. He then stated that the history of the property makes it unique in that the structures existed at a time when the Property and the lot to the east were owned by the same owner such that the setbacks would not have been an issue. Mr. Williams stated that in his view the difficulties which would be had by the Petitioner if the variances are not granted are that two structures would have to be removed. He also stated that in his view the variances requested are the minimum necessary to afford relief.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

The Property is a long and narrow rectangular parcel, approximately 5.8 acres, located on the south side of Frederick Road. The Property currently contains a single-family dwelling located approximately in the rear third of the Property. The home was built in approximately 1973. Behind the dwelling are a patio and an inground pool. The driveway runs from Frederick Road along the west side of the Property and then cuts across the Property and runs along the east side of the Property to a large concrete parking area at the dwelling and then continues back along the east side of the Property to three structures at the rear of the Property (referred to as Barn #1, #2 and #3):

- Barn #1 is a 20 feet by 50 feet, 1000 SF structure located at the southeast corner of the Property approximately one foot from the east boundary line and 7 feet from the south boundary line. (See Variance Plan dated 12/16/19 submitted with Petition.)

- Barn #2 is an irregular shaped structure approximately 61 feet in length and 37 feet wide, (approximately 1825 SF) and located at the southeast corner of the Property approximately 28 feet from the east boundary line and 27 feet from the south boundary line. (See Variance Plan dated 12/16/19 submitted with Petition.)

- Barn #3 is an 11 feet by 54 feet, 594 SF structure located toward the southeast corner of the Property approximately 72 feet from the east boundary line and 84 feet from the south boundary line. (See Variance Plan dated 12/16/19 submitted with Petition.)

The topography is relatively flat yet slopes slightly both north and south from a point near the center of the Property where the dwelling is sited. A septic field lies to the north of the home about midway between the home and Frederick Road.

The three barns at the rear of the Property appear to have been in existence since at least some point in the 1980s. Barn #2 was virtually completely removed by Petitioner who then commenced to rebuild the structure using the same footprint. There is nothing inherent in the attributes of the Property to have prevented the Petitioner from building (or rebuilding) the same desired structures on the Property without encroaching into the setbacks (except that the structures together exceed the 2000 SF maximum for accessory structures and thus a variance would be necessary anywhere on the Property if the size of the structures remained the same).

Vicinal properties are as follows:

- a. To the west of the Property are three parcels zoned RC-DEO all *with a similar shape and size as the Property* and which appear to contain single-family dwellings. The

parcel directly west and abutting the Property includes one detached accessory garage.

Farther to the west of these parcels are *additional parcels that are long and narrow*.

b. To the north of the Property across Frederick Road are residential properties zoned RC-DEO with single-family dwellings and with lots of varying sizes and shapes, including *several lots that have a similar size and shape as the Property*.

c. To the east of the Property are two lots zoned RC-DEO which were created when the lot to the east of the Property (which originally was virtually the same size and shape as the Property currently is) was subdivided into two approximately equal size rectangular lots, with each lot containing a single-family dwelling.

d. Abutting the south side of the Property is a much larger irregular-shaped parcel zoned RC-DEO that appears to include a single-family dwelling.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Zoning Regulations. That section provides that a variance may be granted “where all of the following determinations are made”:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical conditions, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these Regulations.

(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.

(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.

(4) That within the intent and purpose of these Regulations, the variance, if granted, is the minimum variance necessary to afford relief.

(5) That no variance be granted to the minimum criteria established in Section 131.0 for Conditional Uses except where specifically provided therein or in an historic district. Nothing herein shall be construed to prevent the granting of variances in any zoning district other than to the minimum criteria established in Section 131.0.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find that the requested variances do not meet the first, third or fourth criteria necessary for the granting of a variance and therefore cannot be granted.

1. Section 130.B.2.a (1)

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. Second, 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).

With respect to the first prong of the variance test, the Maryland courts have defined "uniqueness" thus:

In the zoning context, the 'unique' aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. 'Uniqueness' of a property for zoning purposes requires that the subject property have *an inherent characteristic not shared by other properties in the area*, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to characteristics as unusual architectural aspects and bearing or party walls. *North v. St. Mary's County*, 99 Md. App. 502, 514, 638 A.2d 1175 (1994) (italics added).

In this case, the Petitioner has not shown that the Property is in any way unique such that the use setbacks will disproportionately impact it. Without more, the narrowness and length of the lot are not unique physical characteristics of the Property. Thus, the Petitioner has not demonstrated that the Property is so unique as to cause the rear and side setbacks or the overall square footage limit on accessory structures to impact it disproportionately. The Petitioner failed to provide any evidence that the Property's shape, size, or topography is *different from the lots in the immediate area*. Rather, when I observed the site, and from a review of the aerial photo admitted into the record, it appeared to me that the Property's size and shape are typical of the surrounding area and that there are many long and narrow lots in the vicinity. The Petitioner offered no evidence that the Property is unique, unusual, or different in a way that would

somehow result in a practical difficulty in complying with the setbacks or square footage limits.

In fact, there is nothing to prevent the Petitioner from locating storage structures properly within the setbacks.

Generally, unless there is a finding that the property is unique, unusual, or different, the process stops here, and the variance is denied without any consideration of practical difficulty or unreasonable hardship. *Cromwell*, 102 MD. App. At 694-695, 651 A.2d at 426. In this case, the Petitioner has not produced sufficient evidence to pass the first prong of the variance test; that is, it has not shown that the Property has unusual or unique characteristics that cause the use setback restriction to disproportionately impact upon it.

The Petitioner has therefore failed to meet the criteria of Section 130.B.2.a (1) of the Zoning Regulations.

Even if the Petitioner had been able to show that the Property is unique as required, the Petitioner has failed to show that practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions or the square footage limits. Mr. Williams stated that the Petitioner could comply with the zoning regulations by locating the structures elsewhere. Mr. Becraft testified that he wants to use Barn #2 as a wood shop and to store extra wood, and that he also stores lawn equipment and tools in Barn #1. He also testified that he built Barn #2 with additional space in the attic so that it does not appear that, if properly placed on the site, Barn #2 would be insufficient for his purposes from a square footage standpoint such that compliance with the square footage limit would disproportionately impact him. Thus, it cannot be said that

the Petitioner would be incur practical difficulties or unnecessary hardships if the variances (the setback variances and the square footage variance) are not granted. While both Mr. Becraft and Mr. Williams stated that it would be costly to remove the structures, a hardship in the zoning sense, without more, does not include the cost to move or remove an offending structure.

2. Section 130.B.2.a (2)

I find 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 Petitioner therefore meets the criteria of Section I 30.B.2.a (2) of the Zoning Regulations.

3. Section 130.B.2.a (3)

Even if the cost to move or remove an offending structure was a proper consideration, of import is the fact that Mr. Becraft has himself made it more costly to build the structures in a compliant location because he has improved all of the structures to some extent. In fact, Barn #2 had been completely leveled and the Petitioner chose to commence rebuilding the structure in the same exact footprint when it would have been a better choice to ensure that the rebuilt structure was not encroaching into the setbacks. Thus, any stated financial difficulties, even if valid, have been self-created.

The Petitioner has therefore failed to meet the criteria of Section 131.B.2.a(3).

4. Section 130.B.2.a (3)

This criterion requires a finding that within the intent and purpose of these Regulations, the variance, if granted, is the minimum variance necessary to afford relief. As discussed above, the Petitioner has not shown that the structures desired cannot be built in a location that does not require a variance. In fact, the testimony and documents are clear that the accessory structures desired can be placed on the lot such that no setback variances are needed. Further, as to the variance requested to increase the square footage of accessory structures, Petitioner testified that he was able to create more space in Barn #2 by adding living storage trusses, so it cannot be shown that the Petitioner needs additional square footage to afford him relief from the zoning regulations.

Within the intent and purpose of the regulations, then, the requested variances are not the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

5. Section 130.B.2.a(4) [Not applicable to this Petition.]**ORDER**

Based upon the foregoing, it is this **19th day of June 2020**, by the Howard County Hearing Examiner, **ORDERED**, that:

1. The request for a variance from Section 104.0.E.4.a.(3)(c)1 of the Zoning Regulations to reduce the required 30-foot side structure setback to 1 foot for existing Barn #1 is **DENIED**;
2. The request for a variance from Section 104.0.E.4.a.(3)(c)1 of the Zoning Regulations to reduce the required 30-foot side structure setback to 28 feet for existing Barn #2 is **DENIED**;

3. The request for a variance from Section 104.0.E.4.a.(4)(c) to reduce the required 10-foot rear setback to 7 feet for existing Barn #1 is **DENIED**; and
4. The request for a variance from Section 128.0.A.12.a.(1)(c) to increase the maximum accessory structure lot coverage from 2,200 square feet to 3,419 square feet is **DENIED**.

HOWARD COUNTY HEARING EXAMINER

Katherine L. Taylor

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.