

IN THE MATTER OF	:	BEFORE THE
CUNNINGHAM and MIANO	:	HOWARD COUNTY
Petitioners	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 20-017V

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DECISION AND ORDER

On October 6, 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 Curtis Cunningham and Mariah Miano (Petitioners) for a variance to reduce the minimum side yard setback from 10 ft to 1 ft 5 3/8-inches, a reduction of 8 feet 4 5/8-inches, at Tax Map 16, Grid 24, Parcel 57, Lot 7, also identified as 3168 Dunes Drive, Ellicott City, 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 108.0.D.4.c.(1)(b).

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. Curtis Cunningham testified as the Property Owner. No one appeared in opposition to the Petition.

FINDINGS OF FACT

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

1. Property Identification and Description. The approximately 0.341-acre property is located north of MD Route 40 (Baltimore National Pike), east of Timber Trails Court and on the west side of Dunes Drive at its terminus. The subject property lies in the 2nd Election District, is identified as Tax Map 16, Grid 24, Parcel 57, Lot 7, and is known as 3168 Dunes Drive, Ellicott City, Maryland (the Property).

2. Adjacent Properties. Adjacent properties are also zoned R-20. There are single-family detached dwellings to the north, west and east of the Property and an open space lot to the south of the Property.

3. The Requested Variance. Petitioner is proposing to develop an addition to the principal structure, the single family detached dwelling unit, which will include an accessory apartment. In order to facilitate this development, Petitioner is requesting a variance from the minimum side setback from 10 feet to 1 foot 5 3/8-inches, a reduction of 8 feet 4 5/8-inches.

4. Agency Comments. There are no Department or agency objections to the proposed variance. The Division of Land Development provided the following analysis regarding the Design Advisory Panel Requirements Review waiver request:

The building is located at 3168 Dunes Drive, Lot 7 of the Dunes Vista Subdivision, and is Zoned R-20. The project proposes the addition of an accessory apartment to the existing single-family dwelling. The accessory apartment will be a 1,000 square foot, single-story addition and located on the southern side of the existing house. The property is subject to DAP review and the requirements of the *Route 40 Manual*.

Staff's review finds the existing home is buffered from Route 40 by existing vegetation and a sound wall that encompasses the Dunes Vista Subdivision. The property is also buffered from MD Route 40 by Open Space Lot 11. The subdivision falls within the DAP review area however the property does not have direct frontage on Route 40, the proposed addition will only be 15 feet tall, and will be adequately buffered and screened from Route 40. The subject property falls within a residential section of Route 40 and would not trigger roadside improvements. Therefore, the project should not warrant a full DAP review and meeting of the requirements of the *Route 40 Manual*.

The Division of Land Development recommended waiving DAP review, which waiver was approved by the Director, Department of Planning and Zoning, on 12/7/2020.

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).

As shown on the Proposed One-Story Accessory Apartment Exhibit, the subject Property abuts Open Space Lot 11 which is unbuildable open space containing a water retention pond and a sound barrier wall. The rear of the subject Property is encumbered by a 12-14 foot in height earthen mound on top of which is located a sound barrier wall. Along the base of the earthen mound is a swale which is designed to carry rain and other surface waters to the water retention pond located along the south of the subject Property. The developable area of the Property is severely constrained and restricted due to the presence of the topographical increase of 12-14' along the rear of the property, the swale along the base of the mound, and the sound barrier wall, all causing the Petitioner practical difficulty in complying with the bulk area requirements for the minimum side yard setback of 10 ft, all in accordance with Section 130.0.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 R-20 (Residential: Single) Zoning District permits single-family detached dwelling units. A DAP Review waiver has been obtained for the proposed accessory use which will share a 50% overlap with the existing single-family dwelling. The accessory use is designed to be architecturally compatible with the existing neighborhood. The proposed addition will only be visible from the single-family dwelling located directly across Dunes Drive, 3165, and from the rear of adjacent Lot 6. The proposed accessory use is adjacent to unbuildable Open Space Lot 11 containing a water retention pond.

The variance, if granted, will therefore not alter the essential character of the neighborhood in which the lots are located nor substantially impair 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 regulations requiring a 10' side yard setback is primarily the result of the rear of the subject property being encumbered with a 12-14' in height earthen mound on top of which is erected a sound barrier wall, and a swale located along the base of the mound to carry rain and other ground water from the neighborhood into the water retention pond located on adjacent

Lot 11 which renders much of the rear yard of the subject Property unusable. This situation was not created by the Petitioner, who purchased the Property after the development of the earthen mound and swale, 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.

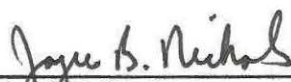
The 8 foot 4 5/8-inch variance sought from the side yard setback for the subject Property will allow for an accessory use 12 feet 10 inches in width at the front entrance to the accessory use and is the minimum decrease necessary to permit the development of an accessory apartment, a use permitted in the R-20 Zone. Within the intent and purpose of the regulations, these variances are the minimum necessary to afford relief, in accordance with Section 130.0.B.2.a.(4).

ORDER

Based upon the foregoing, it is this 7th day of October, 2021, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of Curtis Cunningham and Mariah Miano for a variance to decrease the minimum side yard setback from 10 feet to 1 foot 5 3/8-inches, Tax Map 16, Grid 24, Parcel 57, Lot 7, identified as 3168 Dunes Drive, Ellicott City, Maryland, in the R-20 (Residential: Single) Zoning District, be and is hereby **GRANTED**.

**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.