

IN THE MATTER OF : BEFORE THE

PATRICIA ROSEN : HOWARD COUNTY

Petitioners : BOARD OF APPEALS

: HEARING EXAMINER

: BA Case No. 15-033V

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DECISION AND ORDER

On October 19, 2015, 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 Patricia Rosen for a variance to reduce the 20-foot rear setback to 7 feet for a deck in an R-20 (Residential: Single Family) Zoning District developed in accordance with the R-ED (Residential Environmental Development) district regulations, filed pursuant to Section 130.0.B.2 of the Howard County Zoning Regulations (HCZR).¹

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.

¹ HCZR § 108.0.G.3 Development R-20 zoned property under R-ED Regulations

a. Land in the R-20 District may be developed pursuant to the R-ED District regulations in their entirety, if the property to be developed is:

(1) Subdivided for single-family detached units only; and

(2) A lot or group of contiguous lots with a combined total lot area of more than 100,000 square feet.

b. Land developed pursuant to this section is subject to the R-ED District regulations, including the requirement for Planning Board review, except that structures are required to be set back 75 feet from project boundaries adjoining single-family detached developments

The Petitioner was not represented by counsel. Patricia Rosen testified on her own behalf. No one appeared in opposition to the petition.

A Preliminary Matter

At the outset of the hearing, Petitioner introduced an enlarged portion of the variance plan showing in better detail the rear of the property, the proposed deck and the requested setback (the Amended Plan). Examiner Rule 9.4 requires a petitioner proposing an amendment during the course of the proceedings to submit the amendment as an exhibit. The Hearing Examiner determined the plan revision was not substantive within the meaning of Hearing Examiner Rule 9.5 and therefore could be admitted as evidence during the hearing.² The October 19, 2015 Amended Plan was introduced as Petitioner Exhibit 1.

FINDINGS OF FACT

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

1. Property Identification. The subject property is located at the end of Waverly Overlook Court, just south of Route 99 (Old Frederick Road). It is identified as Tax Map 0010, Grid 0021, Parcel 0224, Lot 11 and is also known as 2239 Waverly Overlook Court (the Property).

² Rule 9.4. Amendments to Petition. If a petitioner proposes to amend a petition during the course of the proceedings, the petitioner must submit the amendment as an exhibit.

Rule 9.5. Substantive Amendments. If the hearing examiner determines that an amendment to a petition is substantive, i.e., the amendment proposes a use that is likely to adversely impact vicinal properties, then the hearing examiner will suspend the hearing for at least three (3) weeks. At least two (2) weeks prior to the rescheduled hearing, the petitioner must send written notice of the amendment and of the date, time, and place of the next hearing to all adjoining property owners, and must file an affidavit of written notification with the clerk. In addition, the petitioner must post the property with notice of the date, time, and place of the next hearing for at least 10 days immediately before the next hearing in accordance with §2.203(b) of the Board's Rules. The hearing examiner may request that DPZ review and make recommendations on the amendment.

2. Property Description. The 6,779sf irregularly shaped Property is improved by a single-family detached dwelling and attached garage. Owing to its location on the end of a cul-de-sac, the Property has limited frontage, which forces any dwelling deeper into the site

3. Vicinal Properties. Adjoining properties are also zoned R-20 and are each improved or being improved with a single-family detached dwelling. During her site visit, the Hearing Examiner observed several rear, enclosed bump-outs.

4. Zoning History. AA Case No. 11-008, July 18, 2011. The Department of Planning and Zoning granted petitioner NV Homes, an administrative variance to reduce the 25-foot rear setback to 20 feet for 2239 and 2240 Waverly Overlook Court.

5. The Petition. Although the Property is zoned R-20, it was developed under the R-ED regulations, in accordance with HCZR § 108.0.G.3. HCZR § 107.0.D.4.d.(1)(c) imposes a 25-foot structure and use rear setback, which in AA Case No. 11-008 was reduced to 20 feet. Petitioner seeks a variance from HCZR § 107.0.D.4.d.(1)(c) to reduce the current 20-foot rear setback to 7 feet for a rear deck. The proposed deck would be a maximum of 14 feet in depth and 28 feet wide. Exhibit 1. The petition references Board of Appeals Case No. 13-018V (decided August 13, 2013), wherein the Hearing Examiner granted the owners of 2231 Waverly Overlook Court a variance to reduce the 25-foot rear setback to 13 feet for a deck. In that case, the Hearing Examiner found the proposed 14.5'-wide by 15' deep deck was the minimum necessary for a useable deck, which must be bumped out somewhat because of a rear chimney.

6. Ms. Rosen testified that the rear of her back yard has a steep slope, making it unusable. The dwelling also has a rear bump-out.

CONCLUSIONS OF LAW

The standards for variances are contained in HCZR § 130.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 §§ 130.B.2.a(1) through (4), and therefore may be granted, as conditioned.

(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 this 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).

In this case, the Property's relatively narrow frontage is curved along the cul-de-sac and the Property is also five-sided. As a result, the buildable area for the dwelling is pushed toward the rear of the Property, which necessitated an administrative variance for the initial construction of the dwelling. The Property's frontage and shape are unique physical conditions causing

Petitioner practical difficulty in complying with the 20-foot rear setback requirement, in accordance with § 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 Findings of Fact support the conclusion that the Property will be used for permitted purposes. The Petitioner is proposing to construct a deck to the rear of her home. Many homes in the neighborhood have rear decks, so a deck will not alter the essential character of the neighborhood or district in which the lot is located, nor be detrimental to the public welfare, in accordance with § 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 Property's uniqueness and was not created by the Petitioner, in accordance with § 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 deck 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 § 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this **28th day of October 2015**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Patricia Rosen for a variance to reduce the 20-foot rear setback to 7 feet for a deck in an R-20 (Residential: Single Family) Zoning District is hereby **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the deck and not to any new structures, uses, or change in uses on the subject property or to any additions thereto.
2. 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 calendar 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.