

IN THE MATTER OF	:	BEFORE THE
	:	HOWARD COUNTY
<b>JOHN AND CHERYL</b>	:	BOARD OF APPEALS
<b>MICHELS</b>	:	
Petitioners	:	HEARING EXAMINER
	:	BA Case No. 09-041V

.....

### **DECISION AND ORDER**

On January 20, 2010, 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 John and Cheryl Michaels (the "Petitioners") for a variance to reduce the 10-foot side setback to 6 feet for a proposed garage addition in an R-20 (Residential: Single Family) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners certified to compliance with the advertising and posting requirements of the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioners were not represented by counsel. John Michaels testified on his own behalf. No one testified in opposition to the petition.

### **FINDINGS OF FACT**

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

1. The .472-acre, property is located on the east side of Greenway Drive several hundred feet north of US 40 (Baltimore National Pike). It lies in the 2nd Election District

and is identified on Tax Map 17, Grid 22, as Parcel 466, Lot 5, and is also known as 3121 Greenway Drive (the "Property"). The Property is part of the Brinkleigh subdivision, which was recorded in 1963.

2. The Property is improved by a two-story single-family dwelling sited in the front section of the Property, about 51 feet from the road, and 28 feet from each side lot line. To the dwelling's side is a large maple tree, which Mr. Michels testified is more than 40 years old.

3. Adjacent properties are also zoned R-12 and are each improved with various types of single-family dwellings. During my site visit, it appeared that many lots in along Greenway Drive were wider and improved with wide, split-level or low-rise residences. I observed several additions on multiple dwellings where the additions appeared to be very close to the adjoining side lot line.

4. The Proposal. The Petitioner is requesting a variance from Section 108.D.4.c(1)(b) to reduce the required 10-foot setback from a side lot line to 6 feet for a proposed 532-square-foot, 22' w by about 24' deep, two-car garage addition. The petition contains a letter from the adjoining property owners stating they have no objection to the proposal.

#### CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. Pursuant to this section, I 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, I find 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.**

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).

Although it may be possible to build the garage to the rear of the dwelling, and to construct a driveway on the other side of the dwelling without a variance, to do so would result in the destruction of the lone mature tree on the Property. Consequently, I find that the tree is a unique physical condition causing the Petitioners practical difficulty in complying with the setback requirement, in accordance with Section 130.B.2.a(1).<sup>1</sup>

---

<sup>1</sup> In so concluding, I follow the Court of Appeals decision in *McLean v. Soley*, 270 Md. 208, 210, 310 A.2d 783 (1973), wherein the Court implicitly acknowledged that the granting of a variance to prevent the

**(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 two-story garage will be used for a permitted purpose and will not change the nature or intensity of use. Two-story garage additions with second stories appear to be commonplace in the neighborhood. 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 Petitioner did not create the practical difficulty in complying strictly with the setback regulations, 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 two-car garage is a reasonable size. The variance is therefore the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

**ORDER**

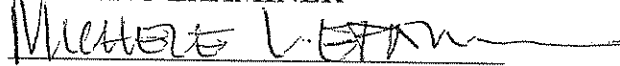
Based upon the foregoing, it is this 25<sup>th</sup> Day of January 2010, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of John and Cheryl Michels for a variance to reduce the 10-foot setback from a side lot line to 6 feet for a proposed two-car garage addition for a single-family detached dwelling in an R-20 (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 Petitioners shall obtain all necessary permits.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

  
Michele L. LeFaivre

**Date Mailed:**

1/26/10

**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.