

IN THE MATTER OF : BEFORE THE
CHRIS RACHUBA : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 13-038V

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DECISION AND ORDER

On February 24, 2014, 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 Chris Rachuba for a variance to reduce the 30-foot rear setback to 10 feet for a proposed single-family detached dwelling in an R-12 (Residential: Single Family) Zoning District, filed pursuant to Section 130.0.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 viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Chris Rachuba testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, the Hearing Examiner finds as follows:

1. Property Identification. The 12,000-square foot, rectangular shaped property is located on the northeast side of Glenmore Avenue about 200 feet northwest of the

intersection of Glenmore and Athol Avenues. The subject property lies in the 1st Election District and is identified as Tax Map 38, Grid 13, Parcel 873, Lots 1054-1057 and has no current address (the Property).

2. Property Description. The R-12 (Residential: Single Family) zoned, rectangular Property is about 100 wide and 120 feet deep. The Property is unimproved. A 100-year floodplain runs through the mid-section of the Property. To the Property's rear is a 10-foot wide alley.

3. Adjacent Properties. Adjacent properties are also zoned R-12. The property to the rear, 6422 Harthorn Avenue, is improved with a 1 ½ story single-family dwelling. Other adjacent properties are unimproved.

4. Zoning History. The Hearing Examiner approved a 10-foot rear setback for the same properties in Board of Appeals Case No. 10-037C (decided January 26, 2011). This variance expired on January 26, 2013 because the petitioner failed to obtain a building permit in two years.

5. The Proposal. The Petitioner is proposing to construct a two-story, single-family detached dwelling and attached garage in the rear section of the lot, behind the floodplain. The dwelling front would sit about 75 feet from the front property line, 28 feet from the westerly lot line, 10 feet from the rear lot line, and 25 feet from the easterly lot line. Because the proposed rear setback encroaches 20 feet into the 30-foot rear setback imposed by Zoning Regulations Section 109.0.D.4.b.(1).(b).(i), the Petitioner is seeking a variance to reduce the setback to 10 feet. Access to the site is proposed from a 12-foot stone driveway off Glenmore

Avenue. The petition states the 10-foot setback is the minimum necessary to permit the construction of a dwelling outside the floodplain.

6. During my site visit, it appeared that many lots in Harwood Park are being redeveloped with various types of single-family dwellings. The Hearing Examiner takes notice that she has approved multiple variances for single-family dwellings in the Harwood Park subdivision owing to the small lot sizes, even when consolidated in a single, larger lot.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.0.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 130.0.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.

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. 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, a 100-year floodplain runs through the mid-section of the Property. Were the applicable setbacks applied to the corner Property, the resultant building envelope would permit only a very small dwelling compared to others in the R-12 zoning district. Consequently, I conclude the Property's unique physical condition causes a practical difficulty in complying with the setback requirement, 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 proposed dwelling will be used for a permitted purpose. As the evidence shows, and as I observed, the neighborhood consists of a broad variety of lot sizes and shapes and dwelling styles and shapes. Many homes in Harwood Park are situated on corner lots with minimal space between them and local roads. 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 130.0.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 setback regulation arises from the shape of the lot and was not created by the Petitioner, 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 proposed dwelling 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 Section 130.0.B.2.a.(4).

ORDER

Based upon the foregoing, it is this **27th Day of February, 2014**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Chris Rachuba for a variance to reduce the 30-foot rear setback to 10 feet for a proposed single-family detached dwelling in an R-12 (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 and plan submitted and not to any other activities, uses, structures, or additions on the Property.
2. Petitioner shall obtain all necessary permits.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFavre

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.