

IN THE MATTER OF : BEFORE THE
ALBERT & SYLVIA PUGLIESE : HOWARD COUNTY
Petitioners : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 13-026V

.....
DECISION AND ORDER

On October 21, 2013, 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 Albert and Sylvia Pugliese for a variance to reduce a 30-foot rear setback to 19.5 feet for an 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 notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Albert Pugliese testified on his own behalf. No one appeared in opposition to the petition.

FINDINGS OF FACT

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

1. Property Identification. The subject property is located on the south side Montclair Drive, about 180 feet east of Willow Lane. It is identified as Tax Map 18, Parcel 177, Lot 6 and is

also known as 2822 Montclair Drive (the Property). The Property is part of the Chestnut Hill Estates subdivision, which dates from 1957.

2. Property Description. The 0.468-acre irregularly shaped, corner Property is improved with a single-family detached dwelling. Access is provided from a driveway running along the western property line and ending in a parking area behind the dwelling. To the east of the rear parking area is an existing deck.

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

4. The Petition. The Petitioners are requesting a variance from Zoning Regulations Section 108.0.D.4.c.(1)(c)(i) to reduce the 30-foot rear setback to 19.5 feet for a 20'x28' rear addition comprising an all-season room with a two-car garage beneath it.

5. Mr. Pugliese testified to the addition being the minimum needed to accommodate a rear two-car garage, which are common in the neighborhood. The location is also intended to protect the stone facades, which are a major characteristic of the older subdivision.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. 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, I find the requested variance complies with Section 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 shape and location are unique physical conditions causing Petitioners practical difficulty in complying with the 30-foot rear setback requirement, in accordance with Section 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. Petitioners are proposing to construct an addition to the rear of their home to accommodate a two-car garage and all-season room. Many homes in the subdivision have rear

additions. The proposed location will also protect the dwelling's stone façade, which is an important characteristic of the neighborhood. The proposed addition 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 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 practical difficulty in complying strictly with the setback regulation arises from the Property's uniqueness and was not created by the Petitioners, 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 addition 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.B.2.a(4).

ORDER

Based upon the foregoing, it is this **28rd day of October 2013**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

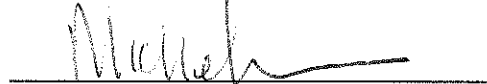
That the Petition of Albert and Sylvia Pugliese for a variance to reduce a 30-foot rear setback to 19.5 feet for an addition in an R-20 (Residential: Single Family) Zoning District is hereby **GRANTED**;

Provided, however, that:

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