

IN THE MATTER OF : BEFORE THE
KIM & KAREN SCHROCK : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 18-027V

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DECISION AND ORDER

On February 27, 2019, 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 Kim and Karen Schrock (Petitioners) for variances to reduce the required 7.5-foot side yard setback to 0.3 feet and the 10-foot accessory structure rear yard setback to 0.6 feet for a shed in the R-SC (Residential: Single Cluster) zoning district, filed pursuant to § 130.0.B.2.a of the Howard County Zoning Regulations (HCZR).

The Petitioner certified to compliance with the advertising and posting requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure. Andrew Robinson, Esquire, represented the Petitioner. Kim Schrock testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

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

1. Property Identification. The subject property is located in the 6th Election District. It is identified as Tax Map 0036, Grid 0016, Parcel 449, Lot 9 and the address is 6241 Copper Sky

Court (the Property).

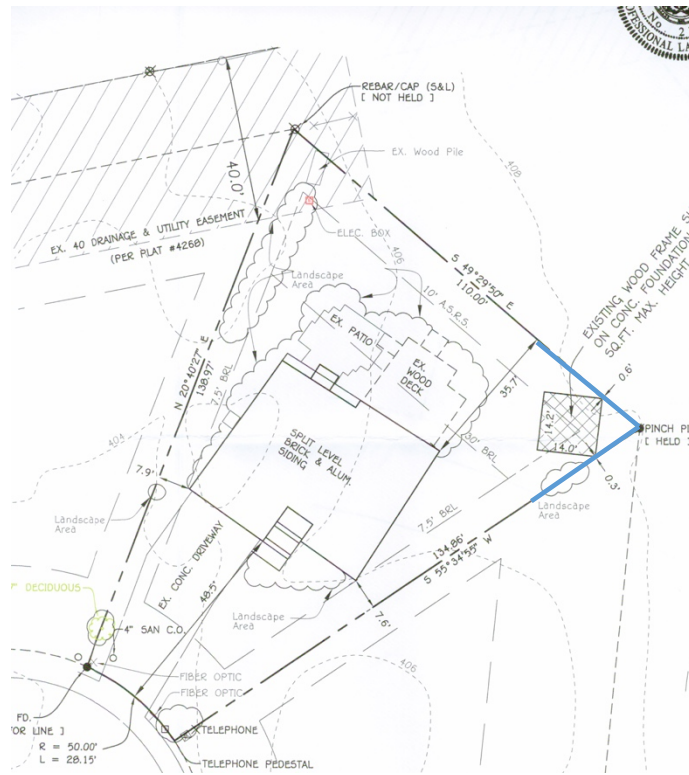
2. Property Description. The irregularly-shaped 8,953sf, cul de sac Property is improved with a single-family detached dwelling and rear deck located in the center of the property.

3. Vicinal Properties. The adjoining R-SC zoned properties to the west, south, and east are each improved with a single-family detached dwelling. The NT (New Town) zoned properties to the north are improved with single-family detached residences. The northeasterly and easterly lots are R-SC zoned Open Space Lots.

4. The Variance Requests. Petitioners are requesting variances from HCZR § 110.0.D.4.d(1)(b)(i) to reduce the 7.5 side yard setback to 0.3 feet and from § 110.0.D.4.d(1)(c)(ii) to reduce the 10-foot accessory structure rear yard setback to 0.3 feet, for a 9-foot high, 198sf shed.

5. Kim Schrock testified his HOA required him to move the long-existing shed located with a drainage and utility easement. Given the small lot size and configuration, the only other place to locate a shed was the opposite corner.

6. The Hearing Examiner took notice of several sheds of similar size in the neighborhood, many of which appear to be encroaching into setbacks. The Hearing Examiner explained that while it is standard approval procedure to require fencing along property lines where the encroaching structure sits less than 4 feet from the property lines to prevent property "use" encroachment onto an adjoining open space lot, she will defer to the HOA and the adjoining neighbor on the necessity of a fence in the area of the shed, considering the existing landscaping. The preferred location of any fencing is shown in blue on pg. 3.



Preferred Location of any HOA-Required Fencing

CONCLUSIONS OF LAW

The standards for variances are contained in HCZR § 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 §§ 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. *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).

With respect to the first prong of the variance test, the Maryland courts have defined “uniqueness” thus.

In the zoning context, the ‘unique’ aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. ‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to characteristics as unusual architectural aspects and bearing or party walls. *North v. St. Mary’s County*, 99 Md. App. 502, 514, 638 A.2d 1175 (1994) (*italics added*).

In the petition, the configuration and size of the cul de sac Property is a unique physical condition causing practical difficulty in complying strictly with the setback regulations, in accordance with HCZR § 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 requested variances are for a shed to be located almost on the property line. The Hearing Examiner observed several neighborhood sheds in similar locations during her site visit. The requested variances will therefore not alter the essential character of the neighborhood or district or impairing the use of development of adjacent property. The petition complies with HCZR § 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.

Petitioners did not create the practical difficulties, in accordance with HCZR § 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 variances are for a reasonable use of the Property, in accordance with HCZR § 130.0.B.2.a(4).

ORDER

Based upon the foregoing, it is this **6th Day of March 2019**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Kim and Karen Schrock for variances to reduce the required 7.5-foot side yard setback to 0.3 feet and the 10-foot accessory structure rear yard setback to 0.6 feet for a shed in the R-SC (Residential: Single Cluster) zoning district are **GRANTED**;

Provided, however, that:

1. The variances shall apply only to the uses and structures as described in the petition and as depicted on the Variance Plan and not to any other activities, uses, structures, or additions on the Property.
2. Petitioners shall obtain all required permits.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFavre

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.

In accordance with C.B. 51-2016, § 1 (HCC Sec. 22.902 - Computation of time), if the deadline to appeal is a Saturday, Sunday, or holiday, or if the County offices are not open, the deadline shall be extended to the end of the next open County office business day.