

IN THE MATTER OF

**TROY B. PORTA AND
STEPHANIE R. PORTA**

Petitioner

: BEFORE THE
:
: HOWARD COUNTY
:
: BOARD OF APPEALS
:
: HEARING EXAMINER
:
: BA Case No. 09-023V

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DECISION AND ORDER

On July 27, 2009, 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 Troy B. and Stephanie R. Porta (the "Petitioners") for a variance to reduce the 20-foot setback from a side public street right-of-way to 9 feet for a proposed single-family semi-detached dwelling in an R-12 (Residential: Single Family) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioners were not represented by counsel. Stephanie Porta and Troy Porta testified in support of the petition. 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 0.69-acre, long, narrow property is located on the southwest corner of the Highland Avenue intersection with Beechfield Avenue. It lies in the 1st Election District and is identified on Tax Map 38, Grid 13, Parcel 873, as Lots 558-559 (the "Site"). The Site is comprised of two lots,

which are each 25 feet wide and 120 feet deep. The Site is part of the 19th century Harwood Park subdivision.

2. Adjacent properties are also zoned R-12 and are improved with various types of single-family dwellings:

3. During my site visit, it appeared that many lots in Harwood Park are being redeveloped, some with semi-attached dwellings, including several on Beechfield Avenue.

4. In BA Case Nos. 05-013V and 08-026V, the Hearing Examiner approved reductions in the 20-foot setback for similar semi-detached dwellings.

5. The Petitioner is requesting a variance from Section 109.D.4.b.1(a) to reduce the 20-foot setback from a side public street right-of-way to 9 feet for a proposed single-family semi-attached dwelling utilizing the zero lot line setback option. The proposed dwelling would be about 16 feet wide.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made:

(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.

(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.

(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.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

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. 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. Section 130.B.2(a)(1). 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, there is no dispute that the end lot is small and narrow. In fact, the 25' wide by 120' deep lot is a substandard lot because it is less than the minimum 12,000 square foot minimum lot size and 60-foot lot width required in the R-12 zone. Were the applicable setbacks applied to the corner Property, the resultant building envelope could accommodate only a 5-

foot wide dwelling. Consequently, I conclude the extreme narrowness of the Property is a unique physical condition causing the Petitioner practical difficulty in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

2. 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 small 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.B.2.a(2).

3. The practical difficulties in complying strictly with the setback regulation arise from the location of the substandard lot and were not created by the Petitioners, in accordance with Section 130.B.2.a(3).

4. 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.B.2.a(4).

ORDER

Based upon the foregoing, it is this **3rd Day of August 2009**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Troy B. Porta and Stephanie R. Porta for a variance to reduce the 20-foot setback from a public street right-of-way to 9 feet for a proposed single-family semi-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 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:

8/4/09

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.