

IN THE MATTER OF : BEFORE THE
MATTHEW & RUBY THOMAS : HOWARD COUNTY
Petitioners : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 13-018V

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DECISION AND ORDER

On August 15, 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 Matthew and Ruby Thomas for a variance to reduce the 25-foot rear setback to 13 feet for a deck 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. Matthew Thomas 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 east side of the terminus of Waverly Overlook Court about 520 feet south of Old Frederick Road. It is identified

as Tax Map 10, Grid 21, Parcel 224, Lot 12 and is also known as 2231 Waverly Overlook Court (the Property).

2. Property Description. The 0.138-acre irregularly shaped Property is being improved by a single-family detached dwelling and attached garage. Owing to its location on the end of a cul-de-sac, the Property has limited frontage, which forces any dwelling deeper into the site. A long set of basement steps provides access from the rear.

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

4. The Petition. The Petitioners are requesting a variance from Zoning Regulations Section 107.D.4.d.(1)(c) to reduce the 25-foot rear setback to 13 feet for a rear deck.

5. Mr. Thomas testified that the proposed 14.5'-wide by 15' deep deck is the minimum necessary for a useable deck, which must be bumped out somewhat because of a rear chimney. He also testified to the presence of a fence along the rear property line, which adjoins an Open Space Lot.

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 is a unique physical condition causing Petitioners practical difficulty in complying with the 25-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. The Petitioner is proposing to construct a deck to the rear of his home. Many home have rear bump outs, so a deck 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 deck 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 **23rd day of August 2013**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Matthew and Ruby Thomas for a variance to reduce the 25-foot rear setback to 13 feet for a deck in an R-20 (Residential: Single Family) Zoning District is hereby **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the deck 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. LeFavre

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.