

IN THE MATTER OF	:	BEFORE THE
<b>TIMMY MARTINS</b>	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 15-011V

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**DECISION AND ORDER**

On May 18, 2015, 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 Timmy Martins for retroactive variances to reduce the required side lot line setback from ten feet to seven feet for a detached garage with an attached shed and to increase the maximum cumulative lot coverage for all accessory structures located on a residential lot developed with a single-family detached dwelling in the planned service area from 600sf to 1,216sf in an R-20 (Residential: Single) Zoning District, filed pursuant to § 130.0.B.2 of the Howard County Zoning Regulations.

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

Petitioner introduced into evidence the exhibits as follows.

1. Photograph of Property (rear) showing three structures
2. Aerial view of Property showing three structures in rear, March 2, 2013

**FINDINGS OF FACT**

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

1. Property Identification. The subject property is located in the 6<sup>th</sup> Election District on the south side of Harding Road about 350 southwest of the intersection of Stansfield Road and Harding Road. It is identified as Tax Map 46, Grid 18, Parcel 152 and known as 10688 Harding Road (the Property).

2. Property Description. The 9.999-acre Property is long and narrow. According to the Variance Plan, the Property is 100 feet wide and between 430 and 434 feet deep, approximately. It is improved with a single-family detached dwelling in the center section of the Property and a detached garage and attached shed in the rear, northeastern corner. The shed is located within the 10' rear setback. The garage is located seven feet from the side yard setback, which is 10 feet. Access is provided on the eastern side of the Property. A concrete driveway ends at the dwelling. Beyond the main section of the dwelling, the driveway becomes a gravel drive providing access to the garage. According to the Variance Plan, the Petitioner has a valid permit to construct an addition on the rear side of the dwelling.

3. Vicinal Properties. All vicinal properties are zoned R-20 and improved with a single-family detached dwelling, excepting Parcel 150 to the west, which is unimproved.

4. The Variance Requests (§§ 108.0.D.4.c.(1)(b) & 128.0.A.12). Petitioner is first requesting a retroactive variance to reduce the required side lot line setback from 10 feet to seven feet for the existing detached garage. Petitioner is also requesting a variance from § 128.0.A.12 to increase the accessory structure maximum lot coverage from 600sf to 1,216sf. The total square footage would comprise what appears to be the 1088sf, 32'x34' garage plus the attached 192sf, 12'x16' shed encroaching into the rear setback and which would be relocated to

the west side of the garage.

5. Technical Staff Report (TSR). The TSR contests Petitioner's petition information about the garage having been built on an existing foundation already located within the setback, referencing prior information from him that the old foundation had been completely removed before the new garage was built. The TSR further concludes the parcel does not appear to have any unique physical characteristics compared to other lots in the vicinity.

6. Mr. Timmy Martins testified to having built four accessory structures on the Property, without valid permits before 2013, as the Hearing Examiner understood his testimony. These structures were the subject of a code enforcement action (CE 13-111). He abated the violation by removing four structures, one 12'x32', the second, 20'x40' the third, 16'x24' and the fourth, 12'x20'. These structures are shown in Petitioner Exhibit 1, which includes a March 2, 2013 aerial image of the Property. He did not remove the garage because he intended to apply for a variance for it. He also explained that a 600sf garage would not accommodate two large vehicles, property maintenance equipment and his hobbies.

7. Mr. Martins further testified to ceasing a dog grooming operation on the Property that did not have conditional use approval. The operation was moved off-site. He then explained, against the Hearing Examiner's caution, that he hoped to submit a conditional use petition for the grooming operation, which would be operated out of the dwelling addition to be constructed. The Hearing Examiner pointed out to Mr. Martins that the survey attached to the petition indicated the Property was 0.99 acres in size.

8. The Hearing Examiner discussed the possibility of reducing the size of the garage with

Mr. Martins, who stated he would do whatever was required. When questioned by the Hearing Examiner, he explained that reducing the size of the garage to 29'x34' (which make the structure compliant with the 10' side lot setback) would require rebuilding the roof and automatic door openings. The Hearing Examiner also questioned him about the electrical service associated with the garage. Mr. Martins explained that the service was "heavied up" for air conditioning, metal repair work and property maintenance.

#### **CONCLUSIONS OF LAW**

The standards for variances are contained in Section 130.0.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, 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. Section 130.0.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. *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 this case, the Property is irregularly shaped, being long and narrow. It appears to be smaller than the adjoining rectangular shaped Property. This irregularity in shape causes practical difficulties in complying strictly with the setback regulation, 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 Hearing Examiner finds that the removal of four other accessory structures greatly reduced the noncompliance with the 600sf accessory structure lot coverage limit. Although the

requested lot coverage variance, 1,216sf, is larger than allowed by right, the size is commensurate with the proposed use and with other approved lot coverage variances. The Hearing Examiner further finds that the existing garage is well-designed and with its raised roof, far exceeds in appearance the majority of detached garages approved by her. In the neighborhood and district are a large number of accessory structures as large as or larger than Petitioner's. (Until October 6, 2013, there were no fixed size limits on accessory structures, the only limitation being that they are smaller than the primary structure.) Subject to the condition of approval that the garage shall not be used for dog grooming, for a home occupation use, contractor use, for a business use, or for a commercial operation, there is no evidence that the size and location of the detached garage would alter the essential character of the neighborhood or district or substantially impair the appropriate use or development of adjacent property, in compliance 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 Petitioners did not create the practical difficulties, in compliance 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 variances are for a reasonable use of the Property, a detached garage. It is therefore the minimum necessary to afford relief, in compliance with Section 130.0.B.2.a.(4).

**ORDER**

Based upon the foregoing, it is this **8<sup>th</sup> Day of June 2015**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Timmy Martins for retroactive variances to reduce the required side lot line setback from ten feet to seven feet for a detached garage with an attached shed (which would not encroach into any setback) and to increase the maximum cumulative lot coverage for all accessory structures located on a residential lot developed with a single-family detached dwelling in the planned service area from 600sf to 1,216sf in an R-20 (Residential: Single) Zoning District is **GRANTED**;

**Provided, however, that:**

1. The variances shall apply only to the uses and structures as described in the petition as depicted on the Variance Plan and not to any other activities, uses, structures, or additions on the Property.
2. The Petitioner shall obtain all required permits, including all retroactive permits.
3. The building permit application plan shall depict the seven-foot setback from the side lot line and the location and square footage of the detached garage, as shown on the variance petition.
4. The detached garage shall not be used for a home occupation use, for dog grooming, for a contractor use, for a business use, or for a commercial or retail operation.
5. The Petitioner shall comply with all county laws and regulations.

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 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.