

IN THE MATTER OF : BEFORE THE
NV HOMES : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 11-033V

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DECISION AND ORDER

On February 13, 2012, 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 NV Homes to reduce the 25-foot rear setback to 17 feet for a single-family detached dwelling 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 Petitioner certified to compliance with the notice and posting requirements of the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Megan Reuwer, Esq., represented the Petitioner. Joseph Rutter testified in support of the petition. No one appeared in opposition to the petition.

The Petitioner introduced into evidence the exhibits as follows.

1. Variance plan denoting properties for which Petitioner is requesting variances and properties for which the Department of Planning and Zoning (DPZ) approved administrative variances.¹
2. DPZ Administrative Adjustment decisions and orders in AA Case Nos. 11-08, 11-23, 11-24, 11-25, 11-26 and 11-27.

¹ The Hearing Examiner also heard the Petitioner's variance petitions for Lot 12 (BA 11-031V) and Lots 24, 25, and 26 (BA 11-032V).

FINDINGS OF FACT

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

1. Zoning. Although the Property is zoned R-20, it was developed under the R-ED (Residential: Environmental Development) regulations as provided by Section 108.F.3 of the Zoning Regulations.²
2. Property Identification. The subject property is located on the east side of Waverly Overlook Court about 550 feet south of Old Frederick Road. The subject property is officially identified as Tax Map 10, Grid 21, Parcel 224, Lot 15 and the address is 2219 Waverly Overlook Court (the Property).
3. Property Description. The 6,553-square foot Property is irregularly shaped, owing to the curvature of Waverly Overlook Court. The proposed dwelling (the Roosevelt model) is set back 25 feet from the rear property line.

² Section 108.F provides as follows.

F. Density Exchange For Neighborhood Preservation Parcels
[Council Bill 50-2008 (ZRA-95) Effective 9/9/08]

1. Sending parcel for Neighborhood Preservation:

A parcel qualifying with the criteria for residential infill development as defined in Section 16.108 (b) of the Subdivision and Land Development Regulations may be a sending parcel for neighborhood preservation in accordance with the requirements of Section 128.L of the zoning regulations.

2. Receiving Parcel for Neighborhood Preservation:

A parcel may be developed as a receiving parcel in association with Neighborhood Preservation Parcel sending parcels at a bonus of up to 10% more dwelling units than would be achievable based on net density in the R-ED District if developed as single-family detached dwelling using the R-ED regulations, in accordance with Section F.3 below and Section 128.L requirements.

3. Development under R-ED Regulations

a. Land in the R-20 District may be developed pursuant to the R-ED district regulations in their entirety, if the property to be developed is:

(1) Subdivided for single-family detached units only; and (2) A lot or group of contiguous lots with a combined total lot area of more than 100,000 square feet.

b. Land developed pursuant to this section is subject to the R-ED district regulations, including the requirement for Planning Board review, except that structures are required to be set back 75 feet from project boundaries adjoining single-family detached developments.

4. Variance Request. The Petitioner is seeking a variance from Section 107.D.4.(1)(c) of the Zoning Regulations to reduce the 25-foot rear setback to 17 feet for a single-family detached dwelling. The requested setback is intended to accommodate a 10' (depth) x 22' (width) sunroom bump-out. In support of the variance, the petition states that Lot 15 is smaller than other lots owing to the requirements of the R-ED district.

5. Referring to Petitioner's Exhibit 1, Mr. Rutter testified that the seven properties with dwellings outlined in blue are the lots with approved administrative adjustments. The five properties with dwellings outlined in red are the subject of BA 11-031V, 032V, and 033V. He also testified that Lot 15 is smaller than the average lot in Waverly Overlook.

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. 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) 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.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, the Property is irregular in shape and smaller in square footage than other lots in the subdivision. Consequently, the Hearing Examiner concludes the shape of the Property causes the Petitioner practical difficulty in complying with the setback requirements, 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.

Even with the reduced setback, the sunroom bump-out would not alter the essential character of the neighborhood or district in which the lot is located because multiple units have similar sunroom bump-outs. The variance therefore will 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) 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 difficulties in complying strictly with the setback regulation arise from the Property's shape and size and were not created by the Petitioner, 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 reduction is the minimum needed for the reasonably sized sunroom bump-out. 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

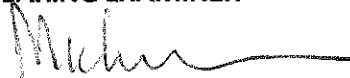
Based upon the foregoing, it is this 23rd Day of February 2012 by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the variance petition of NV Homes to reduce the 25-foot rear setback to 17 feet for a single-family detached dwelling in an R-20 (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 as testified to, and not to any other activities, uses, structures, or additions on the Property.
2. This Decision and Order shall be maintained in the owner's property records and shall be transferred to any succeeding owner of the Property.

**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.