

IN THE MATTER OF : BEFORE THE

KELLY AND JONATHAN JENSEN : HOWARD COUNTY

Petitioners : BOARD OF APPEALS

: HEARING EXAMINER

: BA Case No. 12-001V

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DECISION AND ORDER

On March 19, 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 Kelly and Jonathan Jensen (Petitioners) for a variance to reduce the 20-foot setback from a public street right-of-way to 7.5 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 certified to compliance with the notice and posting requirement of the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Jonathan Jensen testified on behalf of the Petitioner. No one testified in opposition to the petition.

Petitioners introduced into evidence the exhibits as follows.

1. Board of Appeals Case Nos. 04-013V, 9-023V, and 10-035V.

FINDINGS OF FACT

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

1. Property Identification. The subject property lies in the 1st Election District. It is located

on the northeast corner of Highland Avenue intersection with Euclid Avenue and is identified as Tax Map 38, Grid 13, Parcel 873, Lot 279 and is also known as 6615 Highland Avenue. This property address is actually comprised of Lots 279-282 (the Property). The Property is part of the Harwood Park subdivision. Harwood Park is a 19th century subdivision that predates county zoning regulations.

2. Property Description. The R-12 (Residential: Single Family) zoned, rectangular Property (Lot 279) is 50 feet in length along Euclid Avenue and 120 feet along Highland Avenue (the eastern property line). The 3,000-square foot property is partly improved with uses accessory to the dwelling on Lot 281. Lots 279, 280 and 281 are identical in size and shaped.

3. Adjacent Properties. Adjacent properties are also zoned R-12. While the immediate properties are improved with a single-family detached dwelling, usually on a double lot, other lots in the Harwood Park subdivision have been redeveloped with semi-detached dwellings similar to that proposed by Petitioners.

4. The Variance Request. Petitioners are proposing to redevelop Lots 281 and 282 with a single-family semi-detached dwelling. Each dwelling would have a 17.5' (w) x 45' footprint. Petitioners are therefore requesting a reduction in the 20-foot side public street setback to 7.5 feet to accommodate that portion of the semi-detached dwelling on Lot 282.

5. Mr. Jensen testified that the 20-foot setback from makes the lot too restrictive to build on.

6. During my site visit, it appeared that many lots in Harwood Park are being redeveloped with various types of single-family dwellings. The Hearing Examiner takes notice

that the Hearing Authority has approved multiple variances for semi-detached dwellings in the Harwood Park subdivision.

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 long and narrow, with the effect that the 20-foot side public street setbacks greatly reduce the size of the building envelope available for a reasonably sized home. Consequently, I conclude the Property's shape and size 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) 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 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 corner 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) 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 shape of the lot and was 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 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

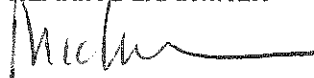
Based upon the foregoing, it is this **29th Day of March 2012**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Kelly and Jonathan Jensen for a variance to reduce the 20-foot setback from a public street right-of-way to 7.5 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.

**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.