

IN THE MATTER OF : BEFORE THE
STEPHEN E. THRASHER : HOWARD COUNTY
 Petitioner : BOARD OF APPEALS
 : BA Case No. 19-012V
 :

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DECISION AND ORDER

The Howard County Board of Appeals convened on September 19, 2019 to deliberate on the petition of Stephen E. Thrasher (Petitioner), for a variance to reduce the 20-foot principal structure side setback from a public street right-of-way to 9.5-feet in an R-12 (Residential: Single) zoning district, filed pursuant to §130.0.B.2 of the Howard County Zoning Regulations (HCZR).

Board members James Howard, Neveen Kurtom, John Lederer, Steven Hunt and William Santos listened to the recording of the June 24, 2019 hearing held before the Howard County Hearing Examiner and reviewed all the evidence submitted at that hearing. Barry M. Sanders, Assistant County Solicitor, served as legal advisor to the Board.

The Board members indicated that they had viewed the property as required by the zoning regulations. The Petitioner certified to compliance with the notice and posting requirements of the Howard County Code.

The Petitioner was not represented by counsel. Stephen Thrasher testified in support of the petition. Neil Denny appeared in opposition to the petition.

The Petitioner submitted into evidence the following exhibits:

- 1. BA19-012 variance justification statement;
- 2. Hearing Examiner Decision and Order in BA13-023V; and

3. Hearing Examiner Decision and Order in BA16-004V.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, the Board makes the following

Findings of Fact:

1. The subject property lies in the 1st Election District and is identified as Tax Map 38, Grid 13, Parcel 873, Lots 876-879 and the address is 6398 Woodburn Avenue, Elkridge, Maryland (the "Property"). The Property is in the R-12 (Residential: Single) zoning district and is 12,000 square feet in size.

2. All adjoining properties are similarly zoned R-12 and developed with single-family detached homes.

3. The petition is for a variance from Section 109.0.D.4.b.(1) of the zoning regulations to reduce the required 20-foot principal structure side setback from a public street right-of-way to 9.5-feet.

4. Stephen Thrasher testified that the variance relief requested will allow for the construction of a single-family home on Lot 878 and 879 (two 25-foot-wide lots located at the intersection of Woodburn and Melrose Avenue). Mr. Thrasher stated that the narrowness of the lots would not allow for the construction of the proposed 33-foot by 35-foot single-family dwelling if the 20-foot setback were maintained. In response to Neil Denny's question, Mr. Thrasher said that the proposed garage will not encroach any further into the rear property line than the proposed single-family dwelling.

5. The Petition states that Parcel 873 contains four 25-foot lots numbered 876 to 879. Lots 876 and 877 do meet the existing setback requirements and are excluded from the variance request. Under new existing setback requirements, a 20-foot setback is required for a

corner lot that adjoins a county road. The lots are part of the Harwood Park subdivision which the Petition states dates to the 1800's and predate county zoning regulations. The variance requested for Lots 878 and 879 is to decrease the side setback from 20-feet to 9.5-feet to construct a single-family dwelling.

CONCLUSIONS OF LAW

The Board's authority in a variance petition hearing is limited to the petition's compliance with the four standards set forth in HCZR §130.0.B.2.a., which gauge the impact of the requested relief from certain bulk regulations, dimensional standards in the applicable zoning district, such as setbacks, lot coverage and building height.

Pursuant to this HCZR §130.0.B.2.a., the Board may grant a variance if the Petitioner demonstrates compliance with all four variance criteria. Based upon the foregoing Findings of Fact, and for the reasons stated below, the Board finds the requested variance complies with §§130.0.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 conditions, 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).

The Board finds small size and narrowness of the Site are unique physical conditions causing the Petitioner practical difficulty in complying with the setback requirements, in accordance with §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 proposed dwelling will be used for a permitted purpose. 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 or district in which the lot is located, or be detrimental to the public welfare, in accordance with §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 practical difficulty in complying strictly with the setback regulations arises from the Site's shape and size and was not created by the Petitioner, in accordance with §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 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 §130.0.B.2.a.(4).

ORDER

Based upon the foregoing, it is this 19th day of September 2019, by the Howard County Board of Appeals, **ORDERED:**

That the Petition of Stephen E. Thrasher for a variance to reduce the 20-foot principal structure side setback from a public right-of-way to 9.5 feet in an R-12 (Residential: Single) zoning district, is hereby **GRANTED**, subject to the following condition:

1. The Petitioner shall comply with all applicable Federal, State, and County laws and regulations.

ATTEST:

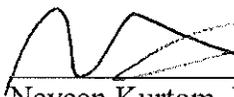
HOWARD COUNTY BOARD OF APPEALS



Robin Regner, Secretary

ABSENT

James Howard, Chairperson

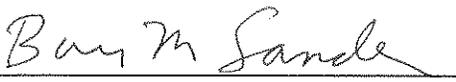


Neeven Kurtom, Vice-Chairperson

PREPARED BY:
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