

IN THE MATTER OF : BEFORE THE
YATA GOMES FERRER : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 18-014V

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DECISION AND ORDER

On October 1, 2018, 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 Yata Gomes Ferrer (Petitioner) for a variance to reduce the 30-foot principal structure rear lot line setback to 4.0 feet for a deck in an R-20 (Residential: Single) zoning district, filed pursuant to § 130.0.B.2.a of the Howard County Zoning Regulations (HCZR).

The 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. No one appeared in opposition to the petition. Yata Gomes Ferrer testified in support of the petition.

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 6th Election District. It is identified as Tax Map 0041, Grid 0024, Parcel 451, Lot 15, and is known as 10540 Patuxent Ridge Way.
2. Property Description. The 20,124sf, irregular-shaped Property is located on a cul-de-

sac and is improved with a single-family detached dwelling. The Property is smaller than neighboring lots. The dwelling sits on the rear lot line and there is currently a wood deck on the back of the house lawfully extending into the rear setback.

3. Vicinal Properties. The adjoining R-20 zoned properties are each improved with a single-family detached dwelling, except for the northern open space lot.

4. The Requested Variance (§ 108.0.D.4.c(1)(c)(i). Petitioner is requesting a variance to reduce the 30-foot principal structure rear lot line setback to 4.0 feet for a deck. The extended deck would house a lap pool.

5. The Hearing Examiner discussed her concern about approving variances less than five feet from an open space lot because property owners tend to encroach into the lot. After discussing various options to prevent encroachment, Petitioner agreed to continue the row of bushes already planted along the affected rear lot line.

CONCLUSIONS OF LAW

The standards for variances are contained in HCZR § 130.0.B.2.a. 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 variances comply with §§ 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. 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).

The 20,124sf, irregular shaped property is smaller than neighboring lots. Being on a cul-de-sac, the building envelope is pushed back further into the Property, causing practical difficulty in complying with the HCZR, in accordance with § 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 requested variance is for a reasonable extension of the existing deck. There is no evidence the requested variance will alter the essential character of the neighborhood or district or impair the use of development of adjacent property. The petition complies 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 Petitioner did not create the practical difficulties, 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 variance is for a reasonable use of the Property, in accordance with § 130.0.B.2.a(4).

ORDER

Based upon the foregoing, it is this **14thDay of November 2018**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Yata Gomes Ferrer for a variance to reduce the 30-foot principal structure rear lot line setback to 4.0 feet for a deck in an R-20 (Residential: Single) zoning district is **GRANTED**;

Provided, however, that:

1. The variance shall apply to the structure described in the petition and shown on the variance plan.
2. The plot plan submitted for the building permit shall identify and show the location of the bushes to be planted along the entire affected lot line.
3. Petitioner shall obtain all required permits.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER


Michele L. LeFavre

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.

In accordance with C.B. 51-2016, § 1 (HCC Sec. 22.902 - Computation of time), if the deadline to appeal is a Saturday, Sunday, or holiday, or if the County offices are not open, the deadline shall be extended to the end of the next open County office business day.