

IN THE MATTER OF : BEFORE THE
JOHN L. DAY : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 17-005V

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DECISION AND ORDER

On July 24, 2017, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the variance petition of John L. Day (Petitioner) for retroactive variances to reduce the collector street right-of-way (ROW) from 30 feet to 4.3 feet and 1.9 feet for two sheds and to increase the maximum lot coverage for accessory structures from 600sf to 1216sf for these sheds and a detached garage, in an R-SC (Residential: Single Cluster) zoning district, filed pursuant to §§ 130.0.B.2.a & 128.0.A.12 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. Thomas Meachum, Esq., represented Petitioner. John Day testified in support of the petition. No one appeared in opposition to the petition.

Petitioner introduced into evidence the exhibits as follows.

1. A-E. Howard County aerial photographs of neighboring properties with accessory structures

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 2nd Election District on the east side of Savage Guilford Road about 187 feet north of Vollmerhausen Road. It is identified as Tax Map 0047, Grid 0005, Parcel 107, Lot 3 and is known as 8085 Savage Guilford Road (the Property). The Property is Lot 3 of the Vollmerhausen subdivision.

2. Property Description. The 0.5465-acre, pipestem, irregularly shaped Property has about 20 frontage feet on Savage Guilford Road. Owing the lot configuration of the Vollmerhausen subdivision, the Property's southern side lot line adjoins the Vollmerhausen Road ROW. The long pipestem driveway provides access to an existing detached garage on the north side of the Property and to the dwelling located in the central westerly portion of the lot. To the rear of the garage is an above ground swimming pool. Along the southerly lot line in common with the Vollmerhausen Road ROW are two small sheds sitting 4.3 feet and 1.9 feet from the ROW. Because the ROW sits at a higher elevation than the sheds, the sheds are not visible from the ROW. The petition includes several photographs documenting this condition and the sloping topography, which causes stormwater runoff to pool in the area between the house and the sheds.

3. Vicinal Properties. Adjacent properties to the east of Savage Guilford Road are also zoned R-SC. Parcel 399 to the northwest is improved with a single-family detached dwelling fronting on Savage Guilford Road. To the northeast, the property is the unimproved Lot 4 of the Vollmerhausen subdivision. Lots 1 & 2 of the Vollmerhausen subdivision are each improved with

a single-family detached dwelling fronting on Savage Guilford Road.

4. The Variance Requests (§§ 110.0.D.4(a)(1)(a) & 128.0.A.12.a(1)(a). Petitioner is requesting retroactive variances to reduce the required collector street ROW from 30 feet to 4.3 feet and 1.9 feet for two sheds and to increase the 600sf maximum lot coverage for accessory structures to 1216sf for these sheds and a detached garage. The small shed is 12'X20' (240sf), the larger shed is 20'X20' (400sf), and the detached garage is 24'X24' (576sf).

5. Mr. Day testified to the irregular topography of the site and the consequent water flows in the area where conforming sheds could be located. He also testified to Exhibit 1A-E being county aerial photographs showing neighborhood properties with large or multiple sheds and garages.

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, as conditioned.

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of 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 affect 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's topography and irregular shape limits the area for a reasonably sized garage and sheds. These circumstances cause practical difficulty in complying strictly with these regulations, 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.

Petitioner Exhibit 1 depicts county aerial photographs showing neighborhood properties with large or multiple sheds and garages. Additionally, the reduced setback for the two sheds will not impair the use of the adjoining property, a ROW. The requested variances would not alter the essential character of the neighborhood or district in which the lot is located, substantially impair the appropriate use or development of adjacent property, 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 petitioner did not create the practical difficulties, in accordance with § 130.0.B.2.a(3).

The 600sf maximum lot coverage applicable to accessory structures in residential zones itself causes practical difficulties.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

The requested relief is for a reasonably sized detached garage and two sheds, in accordance with § 130.0.B.2.a(4).

ORDER

Based upon the foregoing, it is this 29th Day of August 2017, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of John L. Day for retroactive variances to reduce the collector street right-of-way (ROW) from 30 feet to 4.3 feet and 1.9 feet for two sheds and to increase the maximum lot coverage for accessory structures from 600sf to 1216sf for these sheds and a detached garage, in an R-SC (Residential: Single Cluster) zoning district, is **GRANTED;**

Provided, however, that:

1. The variances shall apply only to the uses and structures as described in the petition and 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. The permit plot plan shall accurately depict the location of the structures, approved setbacks, and accessory structure lot coverage.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFavre

Date Mailed: 8/31/17

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.