

IN THE MATTER OF : BEFORE THE
CHAUDARY GILL : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 18-029V

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DECISION AND ORDER

On March 25, 2019, 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 Chaudary Gill (Petitioner) for a variance to reduce the 25-foot principal structure rear setback to 18.20 feet for a building addition in an R-ED (Residential: Environmental Development) zoning district, filed pursuant to § 130.0.B.2.a of the Howard County Zoning Regulations (HCZR).

Petitioner certified to compliance with the notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure. Petitioner was not represented by counsel. Chaudary Gill testified in support of the petition. No one appeared in opposition to the variance petition.

FINDINGS OF FACT

Based upon the evidence of record, the Hearing Examiner finds as follows:

1. Property Identification. The 1.60-acre subject property is identified as Tax Map 0025, Grid 0021, Parcel 105, and known as 4398 College Avenue (the Property).
2. Property Description. The 1.60-acre shallow and triangular shaped Property is improved with a 1,623sf single-family detached dwelling located in the southern section of the Property. A portion of the rear dwelling encroaches into the 25-foot rear setback. To the dwelling's north and

between the dwelling and College Avenue are the Property's existing septic system. The northern section is wooded.

3. Vicinal Properties. Adjoining properties are also zoned R-ED. The northern property is a vacant lot. The western and southern properties are residential lots and are each improved with a single-family detached dwelling.

4. The Variance Request (§ 107.D.4.d(1)(c)). Petitioner is requesting a variance to reduce the 25-foot principal structure setback to 18.20 feet for a building addition. The proposed building addition is for an 80sf addition to the rear of the dwelling and would align with the existing structure encroachment.

5. Mr. Chaudary testified that the addition is for new utilities.

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 variance complies with HCZR § 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 condition, 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).

In this petition, the Property's shape and small size are unique physical conditions causing practical difficulty in complying strictly with the 25-foot setback, in accordance with HCZR § 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 80sf addition would be located behind the house and extend the rear building line of the existing structure encroachment in the southwestern section of the Property. There is no evidence that the granting of the variance would 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 accessory lot coverage structure regulation arises from the irregular shape and size of the Property, 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 requested 80sf addition for new utilities is a reasonable use, in accordance with § 130.0.B.2.a(4).

ORDER

Based upon the foregoing, it is this **4th day of April 2019**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Chaudary Gill for a variance to reduce the 25-foot setback to 18.20 feet for an 80sf addition to an existing structure, is hereby **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the structure addition shown on the variance plan and described in the petition, and not to any new structures, uses, or change in uses on the subject property or to any additions thereto.
2. Petitioner shall comply with all county laws and regulations.
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.