

IN THE MATTER OF : BEFORE THE  
  
**NENA KELLER** : HOWARD COUNTY  
  
Petitioner : BOARD OF APPEALS  
  
: HEARING EXAMINER  
  
: BA Case No. 17-038V

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**DECISION AND ORDER**

On May 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 Nena Keller (Petitioner) for a variance to reduce the 50-foot setback from a side public street right-of-way (ROW) to 16.70 feet for an addition 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. Petitioner was not represented by counsel. No one appeared in opposition to 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 2<sup>nd</sup> Election District at the southeast intersection of Roberts Road and Dorado Drive. It is identified as Tax Map 0025, Grid 0019, Parcel 287, Lot 22, and the address is 8493 Roberts Road (the Property). The Property is Lot 22 of the Brittany Section 1 subdivision, which was recorded in 1967.

2. Property Description. The 20,366sf Property is currently improved with an 1112sf single-family detached dwelling constructed in 1967, according to the Department of Planning and Zoning. In 1967, the setback from a public street ROW was 30 feet; when this setback was later increased to 50 feet, the dwelling encroached some 8'5" into the setback as a legally complying structure. To the rear of the dwelling is a deck and what appears to be an in-ground swimming pool. A driveway in the northeast corner of the Property provides access. The front and southwest lawn is dotted with trees and small bushes.

3. Vicinal Properties. All vicinal properties are zoned R-20 and are each improved with a single-family detached dwelling.

4. The Variance Request (§ 112.D.4.b.(1)(a)(ii)). Petitioner is proposing to construct a 632sf (25'x25'), approximately 25-foot high addition, including a two-car garage, to the southwesterly section of the dwelling. Because the entire proposed addition sits within the 50-foot public street ROW owing to the location of the existing dwelling, Petitioner is requesting a setback of 16.7 feet. A new driveway is proposed on Dorado Drive. Petitioner is also proposing a 2-car car pad behind the addition.

#### **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 §§ 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. Section 130.0.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. *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*).

Additionally, HCZR § 128.0.B.2 of the Zoning Regulations permits additions to noncomplying structures through the variance process. Ordinarily, existing structures may not be considered "unique" features of a property. In this case, however, the existing dwelling is a noncomplying structure and therefore is a unique physical condition of the Property causing practical difficulty in complying strictly with the setback regulation, in accordance with HCZR § 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.**

During her site visit, the Hearing Examiner observed several vicinal dwellings with large additions. There is therefore no evidence the requested variance would 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 are for a reasonable use of the Property, in accordance with § 130.0.B.2.a(4).

**ORDER**

Based upon the foregoing, it is this **21<sup>st</sup> Day of May 2018**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Nena Keller for a variance to reduce the 50-foot setback from a side public street right-of-way (ROW) to 16.70 feet for an addition in an R-20 (Residential: Single) zoning district, is **GRANTED**;

**Provided, however, that:**

1. The variance shall apply only to the uses and structures as described in the petition 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.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

  
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**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.