

## HOWARD COUNTY BOARD OF APPEALS HEARING EXAMINER

IN THE MATTER OF : BEFORE THE  
**GYANAND BAICHULALL** : HOWARD COUNTY  
Petitioner : BOARD OF APPEALS  
: HEARING EXAMINER  
: BA 748-D  
RE: AA-17-008

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### ORDER

On March 23, 2018, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, conducted a hearing on the administrative appeal of Gyanand Baichulall (Petitioner). Petitioner is appealing a December 22, 2017 Decision and Order of the Department of Planning and Zoning (DPZ) in Case No. AA-17-008, in which DPZ denied his administrative adjustment petition to increase the 15-foot maximum accessory structure height to 16.8 feet for a shed in an R-20 (Residential: Single) zoning district. The appeal is filed pursuant to § 130.0.A.3 of the Howard County Zoning Regulations (HCZR).

Petitioner certified to compliance with the notice, posting and advertising 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. Gyanand Baichulall testified in support of the petition. Per longstanding policy, DPZ does not participate in

de novo appeals to the Hearing Examiner from a DPZ administrative adjustment decision and order.

Petitioner introduced into evidence the exhibits as follows.

1. Photograph of shed addition
2. back of shed elevation and height measurements
3. back of shed elevation and height measurements

### FINDINGS OF FACT

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

1. Property Identification. Petitioner is the owner of the 20,908sf subject property located on the north side of Owen Brown Road about 170 feet east of Dewey Drive. It is identified as Tax Map 0036, Grid 0007, Parcel 97, and known as 10186 Owen Brown Road.

2. Property Description. The Property is improved with a single-family detached dwelling. The site plan submitted with the Administrative Adjustment (AA) petition depicts a shed in the northeast rear corner of the Property. The plan shows the shed sitting 10 feet from the east side lot line and what appears to be 10 feet from the rear lot line. The plan states it is not drawn to scale.

3. The AA-17-008 Decision and Order. Upon petition from a property owner, HCZR § 101.0.F.1 authorizes DPZ to grant an adjustment from the provisions of the bulk regulations in an amount not to exceed 20% of a stated bulk requirement, subject to the same standards applicable to variances granted by the Board of Appeals. Applying these standards (set forth in the below Conclusions of Law), DPZ denied Petitioner's administrative adjustment petition to increase the 15-foot maximum accessory structure height to 16.8 feet for a shed in an R-20

(Residential: Single) zoning district, finding no unique physical conditions to support the height increase and no practical difficulties arising from the application of the 15-foot, accessory structure maximum height requirement.

### CONCLUSIONS OF LAW

The standards for administrative adjustments and variances are contained in HCZR § 130.0.B.2.a. Per HCZR § 101.0.F.1, the Hearing Examiner on appeal may grant an administrative adjustment 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 administrative adjustment complies with HCZR §§ 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 an administrative adjustment 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. 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).

With respect to the first prong of the "administrative adjustment"/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) (emphasis added.)

In this case, the original shed has a gambrel roof, an unusual architectural characteristic in Howard County. This is a unique condition causing practical difficulty in complying with the 15-foot maximum accessory height limit for an addition with a different roof structure.

**(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 administrative adjustment is for a gable roof shed addition, which will blend with the neighborhood. During her site visit, the Hearing Examiner observed most accessory sheds have gable roofs, including a shed on adjacent property. There is no evidence the 1'8" additional height would substantially impair the appropriate use or development of adjacent property or be detrimental to the public welfare.

**(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.**

Petitioner did not build the original shed and so did not create the practical difficulties or hardships.

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

The requested administrative adjustment is a reasonable height adjustment and therefore the minimum necessary to afford relief.

**ORDER**

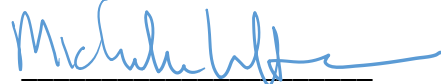
Based upon the foregoing, it is this **18<sup>th</sup> day of June 2018**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition on appeal of Gyanand Baichulall for an administrative adjustment to increase the 15-foot maximum accessory structure height to 16.8 feet for a one-story shed in an R-20 (Residential: Single) zoning district is **GRANTED**;

**Provided, however**, that,

1. The administrative adjustment shall apply only to the uses and structures as described in the petition and plan and not to any other activities, uses, structures, or additions on the Property.
2. Petitioner shall obtain all required permits, including all retroactive or revised permits as may be required by the Department of Inspections, Licenses, and Permits.
3. The plot plan submitted or as revised shall be scaled and shall show the required setbacks.
4. There shall be no habitation or commercial use of the shed.
5. Petitioner shall comply with all state and local laws and regulations.

**Michele L. LeFavre**



**Hearing Examiner**

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.