

IN THE MATTER OF : BEFORE THE  
**STACEY CAROL WALLACE** : HOWARD COUNTY  
Petitioner : BOARD OF APPEALS  
: HEARING EXAMINER  
: BA Case No. 17-029V

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**DECISION AND ORDER**

On February 23, 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 Stacy Carol Wallace (Petitioner) for variances to reduce the 50-foot setback from a public street right-of-way to 7.5 feet and the required 10-foot side lot line setback to 7.5 feet for a new single-family detached dwelling in an R-20 (Residential: Single Family) zoning district, filed pursuant to § 130.0.B.2 of the Howard County Zoning Regulations (HCZR).

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 the Petitioner. Paul Sill testified on behalf of the Petitioner. Laurie Roberts testified, but not in support of or 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 on the northeast corner of the intersection of Old Frederick Road and Toby Lane. It is identified as Tax Map 0017, Grid 0016, Parcel 75, and the address is 9345 Old Frederick Road.

2. Property Description. The 0.170-acre Property predates the HCZR, based on a 1952 deed included with the petition.

3. Vicinal Properties. All vicinal properties are zoned R-20. Parcel 688 to the north, across Old Frederick Road, and Parcel 255 to the northeast, are each improved with a single-family detached dwelling. The northwestern Parcel 471 is improved with a high school. Toby Lane abuts the southwestern Property lot line.

4. The Variance Requests. Petitioner is requesting two variances for a new single-family detached dwelling.

- Reduce the required 50-foot setback from a public street right-of-way imposed by HCZR § 108.0.D.4.b.(l)(a)(ii) to 7.5 feet.
- Reduce the 10-foot (side) setback from lot lines imposed by HCZR § 108.0.D.4.c.(l)(b) to 7.5 feet.

5. Mr. Sills, a licensed professional engineer testified to DPZ confirming the Property as a legally buildable lot. He explained the Property is about 7500sf and about 50 feet wide. Because the R-20 district imposes a 20,000sf minimum lot size, a 10-foot side setback on the east side and a 50-foot setback on the west side, a variance is needed for a reasonably sized dwelling. The Property is one of four lots under development by the Estate; therefore, the proposed driveway will be shared with the dwelling to be built on the adjoining lot to minimize the driveway area and access to Old Frederick Road, a state highway. The requested 7.5-foot setback for the propose 2700sf dwelling is consonant with area homes, and in keeping with the required setbacks for the residential development behind the Property, which is zoned R-ED and developed with a 7.5 side setback.

**CONCLUSIONS OF LAW**

The standards for variances are contained in HCZR § 130.0.B.2.a. This section authorizes the Hearing Examiner to 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 requests comply 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 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. 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 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 Property’s size and narrowness are unique conditions resulting in practical difficulties in complying with the front and side setbacks.

**(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 two requested variances will be in character with the neighborhood and zoning district and will not 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 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 variances are for a reasonably sized dwelling and are therefore the minimum necessary to afford relief.

**ORDER**

Based upon the foregoing, it is this **12<sup>th</sup> Day of March 2018**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Stacy Carol Wallace (Petitioner) for variances to reduce the 50-foot public street right-of-way to 7.5 feet and the 10-foot side lot line setback to 7.5 feet for a new single-family detached dwelling in an R-20 (Residential: Single Family) zoning district, is **GRANTED**.

**Provided, however, that:**

1. The variances 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.
3. Petitioner shall comply with all state and local laws and regulations.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**  
  
**Michele L. LeFavre**

Date Mailed: \_\_\_\_\_

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 calendar 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.