

IN THE MATTER OF : BEFORE THE
MICHAEL C. DIXON : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 18-010V

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DECISION AND ORDER

On February 1, 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 Michael C. Dixon (Petitioner) for variances to reduce the accessory structure side setback from 10.0 feet to 7.0 and 5.9 feet and increase the 1,200sf maximum accessory structure lot coverage to 4,431sf for six accessory structures in an RC-DEO (Rural Conservation) 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. William Erskine, Esq., represented the Petitioner. Michael Dixon testified in support of the petition. No one appeared in opposition to the variance petition.

Petitioner introduced into evidence the exhibits as follows.

1. County aerial image of Property
2. County aerial image of neighboring properties

FINDINGS OF FACT

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

1. Property Identification. The 1.2062-acre subject property is located on the west side of

Florence Road and north of Shaffers Mill Road. It is identified as Tax Map 0006, Grid 0017, Parcel 75, and known as 1670 Florence Road (the Property).

2. Property Description. The Property is long and narrow with a “zee-shaped” front section along Florence Road. It is improved with a single-family detached dwelling. There are seven accessory structures on the Property. Excluding the 127sf tool shed to be removed, the total square footage of the six accessory structures to remain is 4431sf. Accessory Structures 5 and 6 will be used for Petitioner’s home-based contractor accessory use if the Department of Planning and Zoning issues him a permit pursuant to HCZR § 128.0.C.2.

- A 127sf tool shed encroaching on to the southern Parcel 109 and which will be removed
- Accessory Structure 1 – a 631sf frame garage behind the residence
- Accessory Structure 2 - a 250sf covered frame picnic pavilion along the north lot line and to the rear of the 631sf garage
- Accessory Structure 3 - a 904sf frame building running parallel to the northern lot line and located in the middle section of the Property
- Three connected frame buildings along the south lot line and in the rear of the Property
 - Accessory Structure 4 - the rearmost building “A” is 1500sf
 - Accessory Structure 5 - the middle building is 735sf
 - Accessory Structure 6 - the building closest to the house is 4431sf

The Property is accessed from a macadam drive on the northerly side of the Florence Road lot line and which curves through the Property to become a gravel drive and parking area in front of Accessory Structures 5 and 6. It has a modest rise in elevation from Florence Road to the rear lot line. The rear is wooded and there is mature vegetation along the westerly lot line where the variances are sought.

3. Vicinal Properties. Adjoining properties are also zoned RC-DEO. The eastern, northern and western properties are farms. The southern property is improved with a dwelling located at

about the same distance from Florence Road as the dwelling on the subject property.

4. The Variance Requests. Petitioner requests variances to reduce the HCZR § 104.0.E.b(3)(c)1) 10-foot side setback to 7.0 feet for Accessory Structure 2 and to 5.9 feet for Accessory Structure 6. Petitioner requests a variance from HCZR § 128.0.A.12.a(1)(b) to increase the 1,200sf maximum accessory structure lot coverage to 4,431sf for six accessory structures.

5. Michael Dixon testified to the historical use of the Property, which was once much larger and then subsequently subdivided, in reference to Exhibits 1 and 2. As he explained, the location of the accessory structures was based on the once-larger Property. No permits were needed for the accessory structures at the time they were erected decades ago.

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 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 irregular shape causes practical difficulty in complying strictly with the setback regulations, 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 accessory structures are located farther back into the Property and screened by woods. There is no evidence of the accessory structures' size and location altering 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 setback regulations arises from the irregular shape 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 reduced setbacks and lot coverages are for reasonably sized accessory structures in western Howard County in accordance with § 130.0.B.2.a(4).

ORDER

Based upon the foregoing, it is this **6th day of February 2019**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Michael C. Dixon for variances to reduce the accessory structure side setback from 10.0 feet to 7.0 and 5.9 feet and increase the 1,200sf maximum accessory structure lot coverage to 4,431sf for six accessory structures in an RC-DEO (Rural Conservation) zoning district, are hereby **GRANTED**;

Provided, however, that:

1. The variances shall apply only to the six existing accessory structures as described in the petition and plan, and not to any new structures, uses, or change in uses on the subject property or to any additions thereto.
3. Petitioner shall comply with all county laws and regulations.
4. 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.