

IN THE MATTER OF	:	BEFORE THE
EVA NELSON	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 14-020V

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DECISION AND ORDER

On August 18, 2014, 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 Eva Nelson for variances to reduce the structure and use setback from an external street right-of-way (ROW) from 75 feet to 50 feet for two proposed lots in an R-ED (Residential: Environmental Development) Zoning District, filed pursuant to Section 130.0.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

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. William Erskine, Esquire, represented the Petitioner. Stephanie Tuite testified in support of the petition. Paul Marzin also testified but not in opposition to the petition.

A Preliminary Matter

At the outset of the hearing, the Petitioner introduced into evidence an amendment to the variance plan. The amendment corrects an error in the original plan, which mis-noted the plan scale. The correct scale is restated to read "SCALE: 1"=40'. Hearing Examiner Rule 9.4 requires a Petitioner who proposes an amendment during the course of the proceedings to

submit the amendment as an exhibit. The Hearing Examiner determined the amendment was not substantive within the meaning of Hearing Examiner Rule 9.5 and therefore could be admitted as evidence during the hearing.

Petitioner introduced into evidence the exhibits as follows.

1. Amended Variance Plan, April 2014 depicting correct scale.
2. Howard County Historic District Commission, September 12, 2013 agenda
3. November 5, 2013 letter to Stephanie Tuite from Beth Burgess, Executive Secretary, Historic District Commission
4. Plan depicting adjacent structures, August 2014

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 3rd Election District on the west side of Ilchester Road about 1,200 feet southwest of the intersection of Bonnie Branch Road and Ilchester Road. It is identified as Tax Map 31, Grid 4, Parcel 618, Lot PAR 3 and known as 4472 Ilchester Road (the Property).

2. Property Description. The 8.19-acre, irregularly shaped Property has 10 lot lines. It is improved with an historic residence listed on the county Historic Sites Inventory as HO-456, the Fislage-Cavey House, which is located in the northern, central portion of the Property. To its southwest is a wood slat barn located close to the Property's common lot line with Parcel 113. Much of the northern, southwestern and portions of the Property along Ilchester Road are steep slopes with grades of 25 percent or more.

3. Vicinal Properties. Adjacent parcels are also zoned R-ED. Parcel 116 to the south and southwest is unimproved and fronts on Ilchester Road. Also to the southwest, Lot 64 of the

"Locust Chapel-Section 1" subdivision is improved with a single-family detached dwelling accessing Ilchester Road. Parcel 113 to the west is improved with a single-family detached dwelling fronting Bonnie Branch Road. Parcel 162 to the northwest is also improved with a single-family detached dwelling fronting Bonnie Branch Road. The northeast Parcel 618 is improved with a single-family detach home fronting on Ilchester Road. Across Ilchester Road, Parcel 428 ad Lot 4 of Calebs Vineyard, Sec 1, are unimproved.

4. The Variance Requests (Sections 107.0.D.4.a). Petitioner is requesting variances to reduce the structure and use setback from an external street right-of-way (ROW) from 75 feet to 50 feet for two proposed lots (Lots 1 & 2) as depicted on the Amended Variance Petition.

5. Project engineer Stephanie Tuite testified to the need for the variances, including the need to protect the view to the historic structure, the Property's irregular shape and the significant presence of steep slopes, which limit the buildable area. She further testified to the absence of any existing residential structures or uses in the vicinal area (Petitioner's Exhibit 4).

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.0.B.2.a of the Regulations. 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 Section 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. 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) (*italics added*).

In this case, the Property's irregular shape and topography impact it disproportionately. The Hearing Examiner therefore concludes these physical conditions are unique and result in practical difficulties in complying with the structure, use and parking 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.

There is no evidence of the requested variances substantially impairing the appropriate use or development of adjacent property, there being no existing uses, and their granting will not 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.

The Petitioner did not create the practical difficulties.

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

The proposed residential lots are a reasonable use of the Property and therefore the minimum necessary to afford relief.

ORDER

Based upon the foregoing, it is this **9th Day of September 2014**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Eva Nelson for variances to reduce the structure and use setback from an external street right-of-way (ROW) from 75 feet to 50 feet for two proposed lots in an R-ED (Residential: Environmental Development) Zoning District is **GRANTED**;

Provided, however, that:

1. The variances shall apply only to the uses and structures as described in the petition as depicted on the Amended Variance Plan and not to any other activities, uses, structures, or additions on the Property.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER

Michele L. LeFaivre

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.