

IN THE MATTER OF : BEFORE THE
JUDITH MILLER : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
 : HEARING EXAMINER
 : BA Case No. 18-017V

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DECISION AND ORDER

On August 13, 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 Judith Miller (Petitioner) for a variance to increase the 600sf maximum accessory structure lot coverage to 1612sf for two existing structures and a new detached garage in an R-ED (Residential: Environmental Development) 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. Petitioner was not represented by counsel. Judith Miller testified in support of the petition. No one appeared in opposition to the variance petition.

At the outset of the hearing, Ms. Miller amended the variance petition and plan to include an existing, approximately 20'x20' (400sf) carport, which increases the proposed accessory structure lot coverage to 1612sf. The amended plan was admitted as Exhibit 1.

FINDINGS OF FACT

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

1. Property Identification. The 3.23-acre subject property is identified as Tax Map 0025, Grid 0022, Parcel 80, and known as 4405 College Avenue (the Property).

2. Property Description. The irregularly shaped and large (for its location) Property is improved with a single-family detached dwelling and attached 3-car garage. To the dwelling's north is a 12'x36' shed. A driveway in the northern section of the Property provides access. This driveway leads to an existing 20'x20' carport just before the circular section of the driveway in front of the dwelling. Much of the Property is vegetated or in lawn, particularly along the driveway in front of the proposed detached garage location.

3. Vicinal Properties. Adjoining properties are also zoned R-ED. The north, west, and southern properties are residential lots and are each improved with a single-family detached dwelling. The eastern Property is State of Maryland parkland.

4. The Amended Variance Request (§ 128.0.A.12.A.12.a.1(a)). Petitioner is requesting a variance to increase the 600sf maximum lot coverage for accessory structures on a residential lot improved with a single-family detached dwelling and located in the Planned Service Area to 1,612sf for two existing structures (a 400sf carport and a 432sf shed) and a proposed detached garage. The proposed 26'x30' (780sf) garage would be located on the south side of the circular driveway.

5. The Hearing Examiner took notice that the two existing accessory structures appeared to have long existed on the Property. Ms. Miller, an architect, testified to the Property being in the

family for a long time and that she had designed the new dwelling. The proposed detached garage shares the same architectural characteristics as the dwelling.

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 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 shape and large size (for its location) causes practical difficulty in complying strictly with the 600sf maximum lot coverage for accessory structures on

a residential lot improved with a single-family detached dwelling and located in the Planned Service Area, 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 garage would be located in the southwestern section of the Property, where it will be screened by existing vegetation. There is no evidence that the granting of the variance would alter 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 accessory lot coverage structure regulation arises from the irregular shape and rather large size 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 increase in square footage is for a reasonably sized detached garage, in accordance with § 130.0.B.2.a(4).

ORDER

Based upon the foregoing, it is this **15th day of August 2018**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Judith Miller for a variance to increase the maximum accessory structure lot coverage to 1612sf for two existing accessory structures and a new detached garage in an R-ED (Residential: Environmental Development) zoning district, is hereby **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the proposed 26'x30'sf detached garage, the existing 20'x20' carport, and the existing 12'x36' accessory shed as described in the petition and revised plan, and not to any new structures, uses, or change in uses on the subject property or to any additions thereto.
2. The detached garage is for residential use only.
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

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.