

IN THE MATTER OF : BEFORE THE  
  
**AMANDA & DOUGLAS FRIES** : HOWARD COUNTY  
  
Petitioners : BOARD OF APPEALS  
  
: HEARING EXAMINER  
  
: BA Case No. 16-025V

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**DECISION AND ORDER**

On November 14, 2016, 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 Amanda and Douglas Fries (Petitioners) for a variance to reduce the 10.0-foot side lot line to 4.6 feet for a one-story addition in an R-20 (Residential: Single) zoning district, filed pursuant to § 130.0.B.2 of the Howard County Zoning Regulations (the HCZR).

The Petitioners 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. Arnold Foreman, Esquire, represented Petitioners. No one appeared in opposition to the petition.

At the outset of the Hearing, the Hearing Examiner stated the petition and exceptional Variance Plan demonstrated compliance with the four criteria for granting variances, subject to one condition of approval, and asked Petitioners if they wished to present additional evidence. Petitioners rested their case on the petition and plan.

**FINDINGS OF FACT**

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

1. Property Identification. The subject property is located on the south side of Country Lane, approximately 180 feet west of Hearthstone Road. It is located in the 2<sup>nd</sup> Election District, identified as Tax Map 0017, Grid 0022, Parcel 113, Lot 45 and is known as 2875 Country Lane (the Property). The Property is part of the Boone Farm subdivision.

2. Property Description. The 0.326-acre Property is irregularly shaped, having two eastern side lot lines forming an obtuse angle resulting in a very narrow, approximately 30-foot wide rear lot line. The Property is accessed from a driveway on the east side of the dwelling. There is a drainage and utility easement on the west side of the Property.

3. Adjacent Properties. Adjacent properties are also zoned R-20, which, with the exception of Lot 78, are each improved with a single family dwelling. Lot 78 to the east and southeast of the Property is an Open Space Lot owned by the Howard County Department of Recreation and Parks.

4. The Requested Variance. Petitioners are requesting approval to reduce the 10-foot side setback imposed by HCZR § 108.0.D.4.c(1)(b) to 4.6 feet for an approximately 12-foot (w) x 40-foot (d) addition on the east side of their dwelling. The petition states the one-story addition is for a third car space in the attached garage and an expanded laundry room.

#### **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 §§ 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.**

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 case, the Property's shape is a unique physical condition causing practical difficulty in complying with the current setback regulations.

**(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.**

During the hearing, the Hearing Examiner explained to Petitioners her policy of requiring petitioners to install a fence as a condition of approval when she grants a setback

variance from a lot line in common with an Open Space Lot. The purpose of this condition is to ensure petitioners do not encroach into the Open Space Lot, which would be detrimental to the public welfare. As discussed with Petitioners, the fence shall be compliant with HCZR § 128.0.A.9, which regulates such structures, and shall extend from that section of the addition subject to the 4.6 foot setback to the general location where a rebar and cap calls out the beginning of the second side lot line. Subject to this fence condition of approval, there is no evidence of the proposed variance altering the essential character of the neighborhood in which the lot is located or substantially impairing the appropriate use or development of adjacent property, or being 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 practical difficulty in complying strictly with the setback regulations is caused by the irregular shape of the Property and was not created by Petitioners.

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

The addition is a reasonable size.

**ORDER**

Based upon the foregoing, it is this **5<sup>th</sup> day of December 2016**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Amanda & Douglas Fries for a variance to reduce the side setback from 10.0 feet to 4.6 feet for a one-story addition in an R-20 (Residential: Single) zoning district, is hereby **GRANTED**;

**Provided, however, that:**

1. The variance shall apply only to the addition depicted on the Variance Plan and not to any other activities, uses, structures, or additions on the Property.
2. Petitioners shall install a fence compliant with HCZR § 128.0.A.9 generally along the common lot line with Open Space Lot 78. The fence shall be located on Petitioners' property, not on the common lot line. It shall extend from the addition where the 4.6 foot setback is noted on the Variance Plan to the general location where a rebar and cap calls out the beginning of the second side lot line.
3. The plot plan submitted with the building permit application shall be accurately scaled and shall depict the size of the addition (square feet and dimensions), the approved setback and the location and length of the fence.
4. Petitioners shall install the fence no later than 60 calendar days from final building approval of the addition.
5. Petitioners shall obtain all necessary permits, including any permit required for the fence.

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 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.