

IN THE MATTER OF	:	BEFORE THE
JAMI DUNBAR REVOCABLE TRUST	:	HOWARD COUNTY
AND		
ROBERT PINTO	:	BOARD OF APPEALS
PETITIONER	:	HEARING EXAMINER
	:	BA Case No. 19-037V

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DECISION AND ORDER

On June 30, 2020, 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 Jami Dunbar Revocable Trust and Robert Pinto (Petitioners) for variances to reduce the 30 foot side yard setback for an accessory structure over 200 square feet to 23' 3", and to reduce the minimum lot width at the front building restriction line from 200' to 151', to accommodate a pole barn to be associated with a detached dwelling in the RR-DEO (Rural Residential: Density Exchange Option) Zoning District, filed pursuant to Section 130.0.B.2 of the Howard County Zoning Regulations (the HCZR) for variances from Sections 105.0.E.4.a.(3)(c) and 105.0.E.3.a.

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. The Petitioners were represented by counsel, Thomas G. Coale, Esquire. Robert Vogel (Petitioners Engineer), Robert Pinto (Petitioner) and Peter Doan (next door neighbor) testified in support of the Petition. No one appeared in opposition to the Petition.

FINDINGS OF FACT

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

1. Property Identification and Description. The approximately 5.72-acre property is located on the southwest side of Highland Road, approximately 790 feet west of Santa Maria Avenue. The subject property lies in the 5th Election District, is identified as Tax Map 0034, Grid 0021, Parcel 237, Lot 3 and is known as 13185-A Highland Road, Highland, Maryland (the Property). Lot 2 is heavily wooded, has steep slopes to the rear, 3.52 acres of which are encumbered by Forest Conservation Easement, and has a 35' Environmental Setback Line along the rear of the Property. The Property is currently unimproved but is proposed for development with a 2-story single family detached dwelling with a three-car garage and a 494 square foot pole barn. The proposed dwelling is 36' in height. The proposed pole barn is 20' in height, all above grade.
2. Adjacent Properties. Adjacent properties are also zoned RR-DEO and improved with single-family detached dwellings and related accessory structures.
3. The Requested Variances. The Petitioners are proposing to construct a 494 square foot pole barn in front of the proposed single-family dwelling on the Property. The pole barn will be located 23.3 feet from the left property line. HCZR Section 105.0.E.4.a.(3)(c) provides for a 30-foot setback for an accessory structure over 200 square feet. Petitioners are requesting a reduction of 6.7 feet from this side yard setback requirement. Additionally, HCZR Section 105.0.E.3.a requires a minimum lot width at the front building restriction line of 200 feet. Petitioners are requesting a reduction of the front building restriction line of 49 feet, reducing the front building restriction line to 151 feet.
4. The Division of Public Service and Zoning Administration, Department of Planning and Zoning had no comment on the Petition and the Division of Land Development recommended approval with one condition which has been incorporated herein. The Howard County Department of Recreation and Parks, the Resource Conservation District, the Department of Fire

and Rescue Services, and the Maryland Department of Transportation/State Highway Administration all had no comment or objection.

CONCLUSIONS OF LAW

The standards of variances are contained in HCZR Section 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 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.

Compliance with the 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).

Petitioners acquired the subject property, Lot 3, from Patricia Sullivan in an arm's length transaction. At some time prior to the purchase of the Property, Ms. Sullivan petitioned to reconfigure Lots 1 (Sullivan property), Lot 2 (Doan property) and Lot 3 (subject Property). DPZ

applied certain subdivision requirements to these lots, including a Forest Conservation Easement to be applied to Lot 3. No additional density was granted during the reconfiguration process. Petitioners were unaware of the extent of the Forest Conservation Easement until they began the permitting process for the construction of the dwelling and pole barn.

The Property has two unique physical characteristics that, in combination, create practical difficulty in complying with the bulk regulations. First, the lot is unusually configured, a dog leg, and is narrow. The Rural Residential zone imposes a front setback that is related to the width of the lot. In this case, the lot does not meet the minimum width until 201 feet from the front lot line.

Second, while the Property is 5.72 acres in size, nearly two thirds of the lot is unbuildable due to the 3.52-acre Forest Conservation Easement, which contains steep slopes, and an additional 35' Environmental Setback Line. These environmental features are located the rear of the lot, which is also the widest portion of the Property.

In combination, the Petitioners are limited to an extremely small building envelope despite having a comparatively large parcel. The narrowness of the lot pushed development to the rear while the environmental features push development to the front. While Petitioners have been able to locate their primary structure within this small building envelope, they are unable to construct a reasonably sized accessory structure that would otherwise be common for a lot of this size.

Petitioners have attempted to design their lot in a manner that accommodates the unique features of the Property. Nevertheless, the complete absence of a useable rear yard has made the location of accessory structures problematic. Petitioners wish to construct an accessory structure "pole barn" to store equipment that will be utilized for maintenance of the lot. For parcels over five acres, accessory structures of this size are customary and the inability to construct the

same due to these unique land features would be unreasonable. The Forest Conservation Easement, the 35' Environmental Setback Line, the peculiar shaped lot, the irregularity, and shallowness of the lot are all physical conditions causing Petitioners practical difficulties and unnecessary hardship in complying with the side yard setback and minimum front building restriction line for the pole barn in accordance with Section 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 proposed pole barn will be used for a permitted purpose. Granting these requested variances would not alter the essential character of the neighborhood, would not substantially impair the appropriate use and development of adjacent properties, and would not be detrimental to the public welfare. There will be a significant tree buffer between the proposed accessory structure and the closest neighboring lot. It is unlikely that allowing the requested variances would have any noticeable effect on neighboring properties.

With regard to the character of the neighborhood, many of the surrounding properties have multiple accessory structures, including pole barns similar to that proposed by the Petitioners. The variances, if granted will therefore not alter the essential character of the neighborhood in which the Property is located nor substantially impair the appropriate use or development of the adjacent property, nor be detrimental to the public welfare in accordance with Section 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 side yard setback and front building restriction line regulations arise from the Property's shape, topography, Forest Conservation Easement, and the 35' Environmental Setback Line, and were not created by the Petitioners, who acquired the Property in an arm's length transaction, in accordance with Section 130.0.B.2.a.(3). Petitioners did not own the Property when Lots 1, 2, and 3 were reconfigured.

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

The proposed pole barn is 494 square feet in size and is commensurate in size with other accessory structures in the neighborhood. The location of the pole barn was dictated by the extensive Forest Conservation Easement, the 35' Environmental Setback Line, the narrowness and peculiar shape of the Property and the well and septic field. The proposed location is the only location on the Property which could accommodate a pole barn after all development criteria are applied. Within the intent and purpose of the regulations, then, the variances are the minimum necessary to afford relief, in accordance with Section 130.0.B.2.a.(4).

(5) That no variance be granted to the minimum criteria established in Section 131.0 for conditional uses except where specifically provided therein or in an historic district. Nothing herein shall be construed to prevent the granting of variances in any zoning district other than to the minimum criteria established in Section 131.0.

This Section is not applicable to the instant Petition.

ORDER

Based upon the foregoing, it is this 13th day of July 2020, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

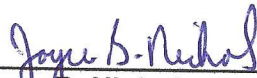
That the Petition of Jami Dunbar Revocable Trust and Robert Pinto for variances to reduce the 30 foot side yard setback for accessory structures over 200 square feet (494 square feet structure) to 23' 3" and to reduce the minimum lot width at the front building restriction line from 200' to 151' , both to accommodate a pole barn accessory to a proposed single-family detached dwelling in an RR-DEO (Rural Residential: Density Exchange Option) Zoning District, is hereby **GRANTED;**

Provided, however, that:

1. The variances shall apply only to the pole barn as described in the Petition and Plan submitted and not to any other activities, uses, structures, or additions on the Property.
2. Petitioners shall obtain all necessary permits.
3. The Petitioners shall provide a notarized Declaration of Intent that not more than 20,000 square feet of existing forest shall be cleared.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER



Joyce B. Nichols

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.