

IN THE MATTER OF : BEFORE THE
ROBERT Z. HOLLENBECK : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 17-008V

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DECISION AND ORDER

On June 5, 2017, 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 Robert Z. Hollenbeck (Petitioner) for variances to increase the 15-foot maximum accessory structure height to 16.5 feet and increase the 600sf maximum accessory structure cumulative lot coverage to 744 square feet for a bank barn in an R-20 (Residential: Single Family) zoning district, filed pursuant to § 130.0.B.2 of the Howard County Zoning Regulations (HCZR).

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.

Petitioner was not represented by counsel. Robert Hollenbeck testified in support of the petition. No one appeared in opposition to the petition.

Petitioner introduced into evidence as Exhibit 1, a copy of the Historic Preservation Order approving the design of the bank barn.

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 1st Election District on

the north side of Sylvan Lane about 1,400 feet northwest of Church Road. It is identified as Tax Map 0025, Grid 0008, Parcel 272 and known as 3420 Sylvan Lane (the Property).

2. Property Description. The 8.63-acre irregularly shaped Property is steeply sloping toward the Patapsco River. Consequently, all improvements are located in the southeasterly plateau portion of the Property.

3. Vicinal Properties. All vicinal properties are zoned R-20. To the southwest and northwest is Patapsco Valley State Park. The northeastern Parcels 171 and 247, Lot 1, are each improved with a single-family detached dwelling. To the southeast is the CRX Railroad right-of-way, and beyond this, the Patapsco River.

4. The Variance Requests (HCZR §§ 108.O.D.I.b & 128.O.A.I2.a.(1)(a)). Petitioner is requesting a variance from the § 108.O.D.I.b 15-foot maximum accessory structure height to increase the height of the bank barn to 16.5 feet and a second variance from § 128.O.A.I2.a.(1)(a) to increase the 600sf maximum accessory structure cumulative lot coverage to 744 square feet for this same barn. The petition states two existing sheds (844sf) and a collapsed stage structure shall be removed to reduce the total accessory structure cumulative square footage to 744sf.

5. On March 3, 2017, the Historic Preservation Commission approved Petitioner's petition for the same bank barn proposed in this variance petition. The decision and order explains the bank barn is designed to look like historic barns in Ellicott City and complies with Ellicott City Historic District Design Guidelines, Chapter 7.C recommendations, "design outbuildings visible from a public way to be compatible in scale, form and detailing with historic structures and outbuildings in the neighborhood." The decision notes that while the barn would

not be visible from the public right of way, it still complies with the recommendation and it would be built into the hillside, taking advantage of the natural topography. As a result, the barn would appear to be a one-story structure on most sides, which complies with Chapter 7.C recommendations "design outbuildings to be subordinate in size and detail to principal buildings in the immediate vicinity."

6. Robert Hollenbeck testified to there being an almost 10' grade change in the proposed location of the bank barn; hence its design and height to make use of the land's existing natural contours in keeping with historic district guidelines.

7. Mr. Hollenbeck further testified there would be no habitation use of the bank barn, no bathroom, no sleeping quarters and no kitchen.

CONCLUSIONS OF LAW

The standards for variances are contained in HCZR § 130.0.B.2.a. This section authorizes the Hearing Examiner to 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 requests comply with HCZR §§ 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) (emphasis added.)

In this case, the Property is irregularly shaped with steep topography, and located in the Ellicott City Historic District, which has unusual architectural characteristics that Petitioner desires to replicate in the design of the bank barn. The Hearing Examiner concludes these are unique physical conditions resulting in practical difficulties in complying with the total accessory maximum cumulative lot coverage and building height requirements.

(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 bank barn in design, height and size will be in character with the neighborhood and zoning district and will not substantially impair the appropriate use or development of adjacent property or 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.

Petitioner did not create the practical difficulties or hardships.

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

The requested variances are for a reasonably sized bank barn and are therefore the minimum necessary to afford relief.

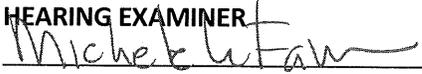
ORDER

Based upon the foregoing, it is this 30th Day of June 2017, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Robert Z. Hollenbeck to increase the 15-foot maximum accessory structure height to 16.5 feet and increase the 600sf maximum accessory structure cumulative lot coverage to 744sf for a bank barn in an R-20 (Residential: Single Family) zoning district is **GRANTED.**

Provided, however, that:

1. The variances shall apply only to the uses and structures as described in the petition and as depicted on the Variance Plan and not to any other activities, uses, structures, or additions on the Property.
2. There shall be no habitation of the bank barn, no electrical heavying up, no bathroom, no sleeping quarters and no kitchen.
3. The two existing sheds (844sf) and a collapsed stage structure shall be removed to reduce the total accessory structure cumulative square footage to 744sf.
4. Petitioner shall obtain all required permits.
5. Petitioner shall comply with all state and local laws and regulations.

**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.