

IN THE MATTER OF	:	BEFORE THE
Dale Webb	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 21-016V

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DECISION AND ORDER

On June 16, 2022, 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 Dale Webb (Petitioner) for variances (1) to reduce the minimum side yard setback, for development other than zero lot line, for structures (6.5 feet high wall on west side of property) from 7.5 feet to 1 foot, a reduction of 6.5 feet, (2) to reduce the minimum rear yard setback for accessory structures (10 foot high wall, 6.5 feet high wall, 2-story accessory structure, and deck) from 10 feet to 1.59 feet, a reduction of 8.41 feet and (3) to increase the maximum height of an accessory structure from 15 feet to 19.5 feet, at Tax Map 50, Grid 02, Parcel 347, also identified as 9325 All Saints Road, Laurel, in the R-SC (Residential: Single Cluster) Zoning District, filed pursuant to Section 130.0.B.2 of the Howard County Zoning Regulations (the HCZR) for variances from §110.0.D.4.d.(1)(b)(i), §110.0.D.4.d.(1)(c)(ii), and §110.0.D.1.a.(2).

The 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. Dale Webb (Petitioner) testified in support of the Petition. No one appeared in opposition to the Petition.

Petitioner presented the following exhibits:

1. Approval of NCU-21-005 for two apartments

FINDINGS OF FACT

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

1. Property Identification and Description. The approximately 1.05 acre irregularly shaped (trapezoidal/rhombus) property is located on the east side of All Saints Road north of its intersection with Old Scaggsville Road and west of Scaggsville Road. The subject Property lies in the 3rd Election District, is identified as Tax Map 50, Grid 02, Parcel 347, and is known as 9325 All Saints Road, Maryland (the Property). The Property is currently improved with an existing single family detached dwelling, a 2-story accessory building containing two apartments and garages, brick walls, a swimming pool and a deck. These improvements all existed when the Petitioner purchased the Property in 2009.

On May 16, 2022, the Howard County Department of Planning and Zoning approved NCC-21-005 certifying the two (2) apartments located over the garage as a nonconforming use.

2. Adjacent Properties. Adjacent properties are in the R-SC Zoning District and are developed with single family detached dwelling units.

3. Roads. All Saints Road has two travel lanes.

4. Water and Sewer Services. The Property is within the Metropolitan District and the Planned Service Area.

5. The Requested Variances. Petitioner is requesting variances to legalize structures existing on the Property when Petitioner purchased the Property in 2009. Specifically Petitioner is requesting variances (1) to reduce the minimum side yard setback, for development other than zero lot line, for structures (6.5 feet high wall on west side of property) from 7.5 feet to 1 foot, a reduction of 6.5 feet, (2) to reduce the minimum rear yard setback for accessory structures (10 foot high wall, 6.5 feet high wall, 2-story accessory structure, and deck) from 10 feet to 1.59 feet, a reduction of 8.41 feet and (3) to increase the maximum height of an accessory structure from 15 feet to 19.5 feet. These structures are located as shown on the Variance Exhibit and are requested for the Property to be utilized for single-family dwelling purposes consistent with the Property's R-SC District Zoning. The existing brick walls, 2-storey accessory structure, and deck require variances from the bulk regulations provided in §110.0.D.4.d.(1)(b)(i), §110.0.D.4.d.(1)(c)(ii), and §110.0.D.1.a.(2)

6. Agency Comments. There are no Department or agency objections to the proposed variances. The Development Engineering Division noted that there are no adverse engineering impacts on adjacent properties and that all improvements must

comply with current Howard County design criteria. The Department of Fire and Rescue Services commented on the NCU application but did not comment on the instant Petition. The Division of Land Development Commented that a plot plan will be required as part of the permit process.

CONCLUSIONS OF LAW

The standards of 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 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).

The variances requested are necessitated by the irregular shape of the lot, the access easement located on the east side of the Property adjacent to the accessory garage/apartment structure, and the existing wall and other structures constructed in 1974 when the Property was in the R-12 Zoning District, which permitted “One and two family detached dwellings”. The Property was subsequently placed in the R-SC Zoning District in 1977 rendering the location of the accessory garage/apartments, walls and deck in violation of the bulk regulations.

As shown on the Variance Exhibit, the Property is an irregular trapezoidal shape. The existing development was constructed in 1974 using a 1940 lot survey. After the 1940 survey, All Saints Road was widened 10 feet which decrease of the front yard was not taken into consideration during construction, unwittingly shifting all actual development 10 feet towards the rear of the Property. Thus, the garage/apartments, walls and deck were thought to meet the 10-foot rear setback but were constructed on the Property line.

Petitioner obtained a new survey after his purchase in 2009 and discovered that part of the pool, deck and wall located on the western side of the Property was constructed on the adjacent property, 9323 All Saints Road. Petitioner purchased a portion of the adjacent property and obtained a new boundary survey in 2019 which identifies all improvements to now be located on the Property, Lot 2.

The Property, Lot 2, is encumbered by an access easement running from All Saints Road along the eastern boundary, providing access to 9327 All Saints Road. This easement varies in width from 10 feet to 13 feet. Prior to Petitioners purchase, this easement was located along the western edge of the Property and was subsequently relocated to the eastern edge, adjacent to the accessory garage/apartments and wall. It is unknown when or why this relocation occurred.

These unique conditions result in practical difficulties and hardships in strictly complying with the bulk regulations of the R-SC Zoning District and prevents the reasonable use of the Property in accordance with §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.

Adjoining properties are in the R-SC Zoning District and are larger lots than the Property and the single family detached dwellings are located a minimum of 100 feet from the Property. Petitioner's requested variances are seeking to reduce the setback for accessory structures along the boundary lines for existing brick walls and a garage/apartments and to increase the maximum height of the existing accessory structure, all of which have existed for almost 50 years. The continued existence of these structures will provide privacy for adjoining property, will not be perceptible to the surrounding residential neighborhood, will not alter the essential character of the neighborhood or district and will not impact the appropriate use and development of

adjacent properties, nor will they alter the essential residential character of the neighborhood. The existing walls and accessory garage/apartments will not be detrimental to the public welfare as it will not produce excessive noise, orders, or other adverse effects that would negatively impact vicinal properties.

The variances, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located nor substantially impair the appropriate use or development of adjacent property, nor 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 difficulties and hardships in complying strictly with the bulk regulations are a result of the irregular shape of the Property, the access easement, and the existing brick walls, accessory garage/apartments and deck. The easement, and existing brick walls and accessory garage/apartments, were created by a previous owner in 1974 or earlier. Petitioner purchased the Property in 2009 subject to the encumbrance of the access easement and the existing brick development. These practical difficulties and hardships were not created by the Petitioner, 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 variances sought, (1) to reduce the minimum side yard setback, for development other than zero lot line, for structures (6.5 feet high wall on west side of property) from 7.5 feet to 1 foot, a reduction of 6.5 feet, (2) to reduce the minimum rear yard setback for accessory structures (10 foot high wall, 6.5 feet high wall, 2-story accessory structure, and deck) from 10 feet to 1.59 feet, a reduction of 8.41 feet and (3) to increase the maximum height of an accessory structure from 15 feet to 19.5 feet are the minimum decrease necessary to afford relief and permit reasonable use of the Property. Lesser variances would not permit the continued existence of the brick structures that were constructed circa 1974. Within the intent and purpose of the regulations, these variances are the minimum necessary to afford relief, in accordance with §130.0.B.2.a.(4).

ORDER

Based upon the foregoing, it is this 16th day of June, 2022, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of Dale Webb for variances (1) to reduce the minimum side yard setback, for development other than zero lot line, for structures (6.5 feet high wall on west side of property) from 7.5 feet to 1 foot, a reduction of 6.5 feet, (2) to reduce the minimum rear yard setback for accessory structures (10 foot high wall, 6.5 feet high wall, 2-story accessory structure, and deck) from 10 feet to 1.59 feet, a reduction of 8.41 feet and (3) to increase the maximum height of an accessory structure from 15 feet to 19.5 feet, at Tax Map 50, Grid 02, Parcel 347, also identified as 9325 All Saints Road, Laurel, in the R-SC (Residential: Single Cluster) Zoning District,

be and are hereby **GRANTED;**

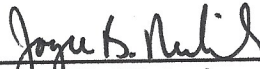
Provided, however, that:

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

2. Petitioner shall obtain all necessary permits.

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.