

IN THE MATTER OF	:	BEFORE THE
<b>MILLARD TAYLOR</b>	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 15-016V

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### **DECISION AND ORDER**

On July 13, 2015, 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 Millard Taylor (Petitioner) for a variance to reduce the 30-foot side setback for accessory structures 200sf or greater to 13 feet for an existing shed in an RC-DEO (Rural Conservation: Density Exchange) Zoning District, filed pursuant to Section 130.0.B.2 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. Melanie Repp and Millard Taylor testified in support of the petition. No one appeared in opposition to the petition.

#### **A Preliminary Matter**

At the outset of the hearing, Petitioner introduced an amended variance plan showing the location and approximate size of the shed (the July 13, 2015 Amended Plan). Examiner Rule 9.4 requires a petitioner proposing an amendment during the course of the proceedings to submit the amendment as an exhibit. The Hearing Examiner determined the plan revision was not substantive within the meaning of Hearing Examiner Rule 9.5 and therefore could be admitted

as evidence during the hearing.<sup>1</sup> The July 13, 2015 Amended Plan was introduced as Petitioner Exhibit 1.

### **FINDINGS OF FACT**

Based upon the petition, the variance plan and the evidence presented at the hearing, the Hearing Examiner finds as follows:

1. Property Identification. The subject property is located on the east side of MD 97 about 100 feet north of Old Frederick Road. The property lies in the 4<sup>th</sup> Election District and is identified as Tax Map 0008, Grid 0011, Parcel 0221, Lot 1 and is also known as 1195 Hoods Mill Road (MD 97) (the Property).

2. Property Description. The 3.003-acre rectangular Property is improved with a single-family detached dwelling located in the lot's mid-section. A driveway in the southerly section of the front lot line provides access to the dwelling and ends on the dwelling's south side. To the rear of the dwelling is a swimming pool. To the pool's south is a small, approximately 4'(w)x8'(l) shed. To the south of this shed is a larger, approximately 12'(w)x30'(l) accessory shed, which lies 13 feet from the southern lot line.

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<sup>1</sup> Rule 9.4. Amendments to Petition. If a petitioner proposes to amend a petition during the course of the proceedings, the petitioner must submit the amendment as an exhibit.

Rule 9.5. Substantive Amendments. If the hearing examiner determines that an amendment to a petition is substantive, i.e., the amendment proposes a use that is likely to adversely impact vicinal properties, then the hearing examiner will suspend the hearing for at least three (3) weeks. At least two (2) weeks prior to the rescheduled hearing, the petitioner must send written notice of the amendment and of the date, time, and place of the next hearing to all adjoining property owners, and must file an affidavit of written notification with the clerk. In addition, the petitioner must post the property with notice of the date, time, and place of the next hearing for at least 10 days immediately before the next hearing in accordance with §2.203(b) of the Board's Rules. The hearing examiner may request that DPZ review and make recommendations on the amendment.

3. Adjacent Properties. Adjacent properties are also zoned RC-DEO and are generally improved with single-family detached dwellings and accessory structures on large lots.

4. The Requested Variance (HCZR § 104.0.E.4.a.(3)(c)(1)). Petitioner is seeking retroactive approval for the approximately 12'(w)x30'(l) accessory shed. Because the shed encroaches 7.0 feet into the side lot line, Petitioner is seeking a variance to reduce the 30-foot side setback for accessory structures 200sf or greater to 13 feet.

5. Millard Taylor testified to the shed having been built about 15 years ago.

#### **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 all of the following determinations are made. Based upon the foregoing Findings of Fact, and for the reasons stated below, the Hearing Examiner finds the requested variance complies 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 standard is a two-part test. First, the property must manifest some unique physical condition, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography. Second, 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).

Additionally, HCZR § 128.0.B.2 of the Zoning Regulations permits additions to noncomplying structures through the variance process.

Ordinarily, existing structures may not be considered "unique" features of a property. In this case, however, the shed is a noncomplying structure and therefore constitutes a unique physical condition of the Property. Given the location of the noncomplying structure, practical difficulties arise in complying strictly with the setback regulation, in accordance with HCZR § 130.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 existing shed is a permitted use. There is no evidence the 7.0-foot setback will alter the essential character of the neighborhood or district, or substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare, in accordance with HCZR § 130.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 setback regulation arises from the noncomplying location of the shed, in accordance with HCZR § 130.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 shed is a reasonable size. Within the intent and purpose of the regulations, then, the variance is the minimum necessary to afford relief, in accordance with HCZR § 130.B.2.a.(4).

**ORDER**

Based upon the foregoing, it is this **2<sup>nd</sup> Day of September 2015**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Millard Taylor for a variance to reduce the 30-foot side setback for accessory structures 200sf or greater to 13 feet for an existing shed in an RC-DEO (Rural Conservation: Density Exchange) Zoning District, is **GRANTED**;

**Provided, however, that:**

1. The variance shall apply only to the use and structure as described in the petition submitted and the amended variance plan and not to any other activities, uses, structures, or additions on the Property.

**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.