IN THE MATTER OF	:	BEFORE THE
Joseph Kumfa	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 22-016V

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DECISION AND ORDER

On August 2, 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 Joseph Kumfa (Petitioner) for a variance to increase the maximum cumulative lot coverage for all accessory structures located on a given residential lot developed with a single-family detached dwelling in the planned public water and sewer service area from 600 square feet to 1,960 square feet, an increase of 1,360 square feet, a 227% increase, at Tax Map 50, Grid 04, Parcel 253, also identified as 9236 Whiskey Bottom 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 a variance from §128.0.A.12.a.(1)(a).

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. Joan Becker, Esq. represented Petitioner and Joseph Kumfa (Petitioner) testified in support of the Petition. No one appeared in opposition to the Petition.

Petitioner presented the following exhibits:

1. Variance Plan
2. Photo of front of home
3.-4. Photos of drive east of the Property
5. Photo of Guest house/garage
6.-7. Photos of deck
8. Photo of rear yard
9.-10 . Photos west of house with fence and tree house
11. Photo of vacant commercial building to right of Property

FINDINGS OF FACT

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

1. Property Identification and Description. The approximately 42,967 square foot irregularly shaped (trapezoidal/rhombus) property is located on the north side of Whiskey Bottom Road, west of its intersection with Washington Blvd North (US Rt 1), and

east of its intersection with Kings Post Court. The subject Property lies in the 3rd Election District, is identified as Tax Map 50, Grid 04, Parcel 253, and is known as 9236 Whiskey Bottom Road, Laurel, Maryland (the Property). The Property is currently improved with a single family detached dwelling, an attached two car garage, a guest house/garage (used for storage) with an attached deck, and a swimming pool. The single-family detached dwelling, the attached two car garage, the detached guest house/garage and the swimming pool all existed when the Petitioner purchased the Property in January 2020. The conversion of the detached garage (610 square feet) to a guest house with the attached deck (1,350 square feet) were added by Petitioner in 2021.

2. Adjacent Properties. Adjacent properties to the north, west, and south are in the R-SC Zoning District and are developed with single family detached dwelling units. Adjacent properties to the east are in the CE-CLI-CR (Corridor Employment) (Continuing Light Industrial) (Commercial Redevelopment Overlay) Zoning District and are developed with vacant commercial properties.

3. Roads. Whiskey Bottom Road has two travel lanes.

4. Water and Sewer Services. The Property is within the planned public water and sewer service area.

5. The Requested Variance. Petitioner is requesting a variance to increase the maximum cumulative lot coverage for all accessory structures located on a given residential lot developed with a single-family detached dwelling in the planned public water and sewer service area from 600 square feet to 1,960 square feet, an increase of 1,360 square feet, a 227% increase, to legalize structures Petitioner

converted/constructed after Petitioner purchased the Property in 2020. 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 guest house/garage and deck require a variance from the bulk regulations provided in §128.0.A.12.a.(1)(a).

6. Agency Comments. There are no Department or agency objections to the proposed variances. 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 variance requested is necessitated by the irregular trapezoidal shape of the subject Property, the steep slopes, the previously existing guest house/garage and the existing deck constructed by Petitioner.

As shown on the Variance Exhibit, the Property is an irregular trapezoidal shape. The Property is larger (42,967 square feet) than its adjoining residential properties: the adjacent property to the left of the Property is approximately 12,000 square feet and the properties to the rear of the subject Property are each approximately 8,000 square feet in area. The Property has an approximately 33% rise in grade from Whiskey Bottom Road to the rear of the Property. This steep slope along with the irregular shape of the Property limited the location of a deck which would be accessible from the swimming pool. The deck was constructed by a contractor who failed to obtain a building permit. When Petitioner applied for a building permit for the deck, he discovered that the Property was in violation of the maximum net lot coverage for accessory uses necessitating the instant variance request. The Property already exceeded the maximum net lot coverage when

Petitioner purchased the Property in 2020. (Guest house/garage 610 square feet) The Property is much larger than adjoining properties and limiting the 42,967 square feet Property to the same 600 square feet net maximum as the 8,000 square feet properties to the rear is visually inequitable.

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.

Adjourning properties in the R-SC Zoning District have multiple accessory structures in their side and rear yards. The existing structures on the subject Property are not visible from the street and all of the existing accessory structures comply with the required building setback lines. The subject Property is screened from adjacent residentially zoned property by trees, bushes, and privacy fences. Adjacent property to the east is developed with vacant commercial structures which would not be affected by Petitioner's existing structures. Petitioner's requested variance is seeking to increase the lot coverage to legalize the existing garage conversion and deck. 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, in accordance with §130.0.B.2.a.(2). The deck and guest house/garage will not be detrimental to the public welfare as they will not produce excessive noise, orders, or other adverse effects that would negatively impact vicinal properties.

(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 steep slopes, and the guest house/garage. The detached garage was constructed/expanded by a previous owner in 2011/2012. As constructed, the guest house/garage exceeded the 600 square feet net maximum lot coverage. (610 square feet) Petitioner purchased the Property in 2020 subject to the existing detached garage and made internal changes to it but did not expand its footprint. The deck was added to help provide access to the existing pool and its location was necessitated by the steep topography. 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 variance sought, to increase the maximum cumulative lot coverage for all accessory structures located on a given residential lot, developed with a single-family detached dwelling in the planned public water and sewer service area, from 600 square

feet to 1,960 square feet, an increase of 1,360 square feet, a 227% increase, is the minimum increase necessary to afford relief and permit reasonable use of the Property. A lesser variance would not permit the continued existence of the detached garage (which Petitioner converted into a guest house and currently used for storage) which was constructed/enlarged 2011/2012 or the continued existence of the deck. Within the intent and purpose of the regulations, this variance is the minimum necessary to afford relief, in accordance with §130.0.B.2.a.(4).

ORDER

Based upon the foregoing, it is this 2nd day of August, 2022, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of Joseph Kumfa for a variance to increase the maximum cumulative lot coverage for all accessory structures located on a given residential lot developed with a single-family detached dwelling in the planned public water and sewer service area from 600 square feet to 1,960 square feet, an increase of 1,360 square feet, a 227% increase, at Tax Map 50, Grid 04, Parcel 253, also identified as 9236 Whiskey Bottom Road, Laurel, in the R-SC (Residential: Single Cluster) Zoning District, be and is hereby **GRANTED;**

Provided, however, that:

1. The variance 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.