

IN THE MATTER OF : BEFORE THE  
KELLI MCDONOUGH : HOWARD COUNTY  
Petitioner : BOARD OF APPEALS  
 : HEARING EXAMINER  
 : BA Case No. 17-001V

.....  
**DECISION AND ORDER**

On March 20, 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 variance petition of Kelli McDonough (Petitioner) to reduce the 30-foot rear setback to 18 feet for an attached garage in an R-20 (Residential: Single) zoning district, filed pursuant to § 130.0.B.2.a of the Howard County Zoning Regulations (HCZR).

The 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. The Petitioner was not represented by counsel. Kelli McDonough testified in support of the petitioner. No one appeared in opposition to the petition.

**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 2<sup>nd</sup> Election District on the northeast corner of the Hickory Drive intersection with Court House Drive. It is identified as Tax Map 0025, Grid 0001, Lot 12 and is known as 3409 Hickory Drive (the Property).

2. Property Description. The 0.46-acre irregularly shaped Property has a southwesterly side lot line that widens from the front to the rear lot line to accommodate the Court House Drive right-of-way (ROW). Additionally, the southwesterly portion of the Property sits at a higher elevation than this ROW. Consequently, the dwelling is located toward the northeasterly lot line. A driveway on the southwesterly side of the dwelling provides access to a paved parking area behind the dwelling. There is a shed located in the rear setback. A portion of the rear yard is fenced. The Property is Lot 12 of the Linwood Section 4 subdivision.

3. Vicinal Properties. The properties along Hickory Drive are also zoned R-20 and are each improved with single-family detached dwelling. Several dwellings on Hickory Drive have an attached garage on the side of the dwelling. The southeastern, Howard County-owned POR-zoned (Planned Office Research) Parcel 109 is unimproved. To the southwest, across Court House Drive, is the POR-zoned, Parcel 12, which is the site of the Howard County government campus.

4. The Variance Request. Petitioner is requesting a variance to reduce the 30-foot rear yard setback imposed by HCZR § 108.0.D.4.c(1)(i) to 18 feet for an attached, approximately 20'x28', 12.5' high, 2.5-car attached garage.

5. Kelli McDonough testified to the garage being needed to accommodate two cars and yard equipment. The rear shed would be removed.

#### **CONCLUSIONS OF LAW**

The standards for 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 variance complies with §§ 130.0.B.2.a(1) through (4), and therefore may be granted, as conditioned.

**(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 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).

In this case, the Property is irregular in shape and the lot configuration pushed the dwelling toward the easterly section of the lot. This, together with the side elevation, precludes Petitioner from adding a garage addition on the side of the dwelling, as is typical of the neighborhood. It also causes a practical difficulty in complying strictly with these regulations, in accordance with HCZR § 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 attached garage will be added to the rear of the Property and will generally

not be seen by neighbors along Hickory Drive. There is no evidence that the granting of the variance would alter the essential character of the neighborhood or district in which the lot is located, substantially impair the appropriate use or development of adjacent property, or 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 difficulty in complying strictly with the setback regulation arises from the shape and topography of the Property, 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 requested reduced setback is for a reasonably sized attached garage addition, in accordance with § 130.0.B.2.a(4).

**ORDER**

Based upon the foregoing, it is this **13<sup>th</sup> Day of April 2017**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Kelli McDonough to reduce the 30-foot rear setback to 18 feet for a 20'x28' attached garage in an R-20 (Residential: Single) zoning district, is **GRANTED**;

**Provided, however, that:**

1. The variance shall apply only to the uses and structures as described in the petition as depicted on the variance plan and not to any other activities, uses, structures, or additions on the Property.
2. The Petitioner shall obtain all required permits.

**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 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.