

IN THE MATTER OF : BEFORE THE  
**Adam Carballo** : HOWARD COUNTY  
Petitioner : HEARING EXAMINER  
 : Case No. BA-21-036V

.....

**DECISION AND ORDER**

On February 24, 2022, the undersigned, serving as the Howard County Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Adam Carballo, Petitioner, for variances from Sections 105.0.E.4.a.(3)(b) and 105.0.E.4.a(4)(b) to reduce the 30-foot side setback to 10 feet and to reduce the 60-foot rear setback to 50 feet for an addition to the existing single family detached dwelling. The property is identified as Tax Map 40, Parcel 490, Lot 30 (the "Property" ) and known as 7641 Green Dell Lane. The parcel is 3.81 acres and is located in the RR-DEO (Rural Residential – Density Exchange Overlay) zoning district.

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Adam Carballo, the architect, testified in support. Mike Boteler, one of the owners of the Property, testified in support. No one appeared in opposition.

**FINDINGS OF FACT**

**A. Petition and Plan.** A revised Petition was filed with the County on or around December 15, 2021. Accompanying that Petition is a Plan that shows the Property, the proposed addition and the setbacks. In addition to the Petition and Plan, the Petitioner, during the hearing,

referred to a Google Earth image of the Property which was marked as **Petitioner Exhibit 1**.

**B. Property and Vicinal Properties.**

The parcels adjoining the Property and across Green Dell Lane from the Property are zoned RR-DEO and developed with single family homes. While not directly adjoining the Property, there is a parcel used for a religious facility behind the Property (the pipestem driveway from another residence is between the Property and the religious facility parcel). The lots in the immediate neighborhood appear to be similar in size to the Property and also appear to have similar sized dwelling units which range from 3000 to 7600 square feet.

While the lots in the immediate neighborhood are both regular irregular in shape, the Property is a regularly shaped parcel. The house was built such that the backyard area is considerably smaller than the area in front of the house. As shown on the Plan, the approximate distance from the rear lot line to the rear of the house is about 100 feet, while the distance from the front property line appears to be three times that length. There is an existing well located in the rear yard and a private sewage easement in the front of the house.

**C. Variance Requested.**

This is a petition for a variance from Sections 105.0.E.4.a.(3)(b) and 105.0.E.4.a(4)(b) to reduce the 30-foot side setback to 10 feet and to reduce the 60-foot rear setback to 50 feet for an addition to the existing single family detached dwelling. The Petitioner requests a variance to build an approximate 45 foot by 55 foot garage addition with two car bays and a larger bay for an RV.

The garage would be attached to the main house by a 14.5 foot covered breezeway.<sup>1</sup>

---

<sup>1</sup> Section 130.0 of the Howard County Zoning Regulations includes the following definition: *Principal Use or Structure* : The main use of a lot or the structure used for the main function of a lot, as opposed to an accessory use or structure. Structures which are attached to the principal structure, either directly or by a breezeway not to exceed 15 feet in length, shall be considered part of the principal structure. Thus, the proposed addition shall be considered part of the principal structure, rather than an accessory structure.

The addition over the car garage will be two stories with exterior stairs. Mr. Carballo testified that the upstairs will be unfinished and used for storage.

While a two-car garage addition could be built within the building restriction lines without a variance, the witnesses testified that the owners wish to have adequate garage space for additional cars and an RV. Mr. Boteler pointed out, and Petitioner Exhibit 1 shows, that there are in fact other parcels in the immediate vicinity that include large attached or detached structures. The only location for such a structure on the Property is where proposed, as it would be impossible to build that same structure on the opposite side of the backyard due to the presence of the well.

### **CONCLUSIONS OF LAW**

The standards for variances are contained in Section 130.B.2.a of the Zoning Regulations. That section provides that a variance may be granted “where all of the following determinations are made”:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical conditions, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these Regulations.

(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.

(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.

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

(5) That no variance be granted to the minimum criteria established in Section 131.0 for Conditional Uses except where specifically provided therein or in an historic district. Nothing herein shall be construed to prevent

the granting of variances in any zoning district other than to the minimum criteria established in Section 131.0.

**1. Section 130.B.2.a (1)**

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.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. 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).

While the Property is a regularly shaped parcel, the house was built such that the backyard area is considerably smaller than the area in front of the house. As shown on the Plan, the approximate distance from the rear lot line to the rear of the house is about 100 feet, while the distance from the front property line appears to be three times that length. Further, there is an existing well located in the rear yard and a private sewage easement in the front of the house. These features cause the Property to be different from the nature of the surrounding properties. The unique conditions disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations, because a similar size garage cannot be built anywhere else in the rear of the home.

*The criteria set forth in Section 130.B.2.a (1) are met.*

**2. Section 130.B.2.a (2)**

I find 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 variance is for a permitted purpose and many of the neighboring dwellings have large attached or detached structures. Further, the addition will be buffered from the closest property by existing vegetation and from the road by distance and vegetation.

*The Petitioner therefore meets the criteria of Section 130.B.2.a (2) of the Zoning Regulations.*

**3. Section 130.B.2.a (3)**

The hardships and practical difficulties which arise from the Property's configuration were not self-created.

*The Petitioner has met the criteria of Section 130.B.2.a(3).*

**4. Section 130.B.2.a (4)**

While the addition is over 2300 square feet, it is clear that other home in the immediate neighborhood have similarly sized additions or structures and that the request is reasonable.

*Within the intent and purpose of the regulations, then, I find the requested variance is the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).*

**5. Section 130.B.2.a(5) [Not applicable to this Petition.]**

**ORDER**

Based upon the foregoing, it is this **28th day of February 2022**, by the Howard County Hearing Examiner:

**ORDERED**, that the request for variances from Sections 105.0.E.4.a.(3)(b) and 105.0.E.4.a(4)(b) to reduce the 30-foot side setback to 10 feet and to reduce the 60-foot rear setback to 50 feet for an addition to the existing single family detached dwelling shall be and hereby is **GRANTED**.

**Provided, however**, that the variances shall apply only to the proposed addition set forth in the Plan submitted with the revised Petition and shall be constructed in accordance therewith.

**HOWARD COUNTY HEARING EXAMINER**

---

Katherine L. Taylor

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.