

IN THE MATTER OF	:	BEFORE THE
James Foster	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 20-010V

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DECISION AND ORDER

On January 28, 2021, 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 James Foster (Petitioner) for a variance to increase the maximum cumulative lot coverage for accessory uses, on residential lots developed with single family detached dwellings in a planned water and sewer service area, by 100 square feet, in the R-ED (Residential: Environmental Development) Zoning District, filed pursuant to Section 130.0.B.2 of the Howard County Zoning Regulations (the HCZR) for a variance from Section 128.0.A.12.a(1)(a) .

The Petitioners 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. The Petitioner was represented by counsel, Gordon Heyman, Esq.. James Foster (Property Owner), Jeffrey Penza (Architect), and Robert Morris (neighbor) testified in support of the Petition. No one appeared in opposition to the Petition.

FINDINGS OF FACT

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

1. Property Identification and Description. The approximately 33.694-acre property is located on the west side of Trotter Road, south of its intersection with Red Clover Lane and north of its intersection with Summer Sunrise Drive. The subject property lies in the 4th Election

District, is identified as Tax Map 0035, Grid 0007, Parcel 0023, and is known as 6044 Trotter Road, Clarksville, Maryland (the Property). The property has approximately 10 acres of farmland, approximately 10 acres of woods, and the remaining acreage is improved with a historic single family dwelling dating from the 18th century which has been added onto throughout the years, five outbuildings (a historic smoke house and cottage, a historic barn with six horse stalls and a corn crib, and a springhouse), and a mature arboretum with more than two dozen types of trees ranging in age from 20 to more than 150 years old. The property is also home to the oldest Beech tree in Maryland.

The January 20, 2021 referral from the Resource Conservation Division states that the location and structures on the subject property are historic and on the Historic Sites Inventory as HO-161, John Due House/Henry Warfield House. In November 2019, the subject property came before the Historic Preservation Commission for Advisory Comments. At that time, the smokehouse was being considered for use as an accessory apartment which would require approval of a Conditional Use. The Property Owner has since decided to use the smokehouse as a home office. The outbuildings were all constructed prior to current regulations, are non-conforming, and their combined approximately 4,000 square feet of floor area exceeds the 600 foot maximum permitted lot coverage of accessory structures.

2. Adjacent Properties. Adjacent properties are also zoned R-ED and improved with single-family detached dwellings.

3. The Requested Variance. The Petitioners are proposing to expand the existing smokehouse by 100 feet, creating a bathroom, a mechanical room, and a small porch.

CONCLUSIONS OF LAW

The standards of variances are contained in HCZR Section 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 Section 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 existing detached dwelling and outbuildings, including the smokehouse, were constructed in the 18th and 19th centuries. The subject property is 33.694 acres in size. The property is surrounded by homes constructed in the 20th and 21st centuries on lots 2 acres or less, many of which are constructed at 2 dwellings per net acre. The size and existing development of the subject property is thus unique as (1) it is historic, (2) it has a large (33.694) acreage and (3) its outbuildings having been historically constructed with 4,000 square feet lot coverage. The Property Owner purchased the property 2 years ago with all the existing 4,000 square feet of historic outbuildings. These structures are non-conforming as they predate the adoption of Zoning Regulations in Howard County. The existence of these many historic outbuildings creates a

practical difficulty as their footprint exceeds the current HCZR maximum of 600 square feet. The large acreage, historic nature, and 4,000 square feet of existing lot coverage of accessory buildings results in several unique physical conditions causing the Petitioner practical difficulty in complying with the bulk area requirements for the smokehouse in accordance with Section 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.

As the evidence shows, and as the Hearing Examiner observed, the neighborhood along Trotter Road consists of generally regular rectangular lots, environmental features and open space. The proposed 100 square foot addition to the smokehouse will not be visible from Trotter Road or any adjoining property but is visible from Red Clover Lane in the winter when the abundant landscaping is partially defoliated. The construction of a 100 foot addition to the rear of the historic smokehouse on the 33.694 acre property as testified to by Robert Morris, a neighbor, will not impair the appropriate use of adjacent properties. The variance, 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 Section 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 bulk regulation limiting lot coverage of accessory structures to 600 square feet maximum, on historic property with 4,000 square feet of existing accessory structures constructed several centuries ago, was not created by the

Petitioner, who purchased the property 2 years ago, in accordance with Section 130.0.B.2.a.(3). Without a variance, the Property Owner could not make any changes, or perhaps repairs, to the existing outbuildings.

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

The existing historic dwelling and 4,000 square feet of outbuildings, including the smokehouse, render the proposed 100 square foot addition to the smokehouse on approximately 33.694 acres of woods and farmland de minimus and is the minimum variance needed to accommodate the bathroom/ mechanical room/ porch addition. Within the intent and purpose of the regulations, then, the variance is the minimum necessary to afford relief, in accordance with Section 130.0.B.2.a.(4).

ORDER

Based upon the foregoing, it is this 28th day of January 2021, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of James Foster for a variance to increase the 600 square foot maximum lot coverage for accessory structures to a single family detached dwelling in a planned water and sewer area, for a 100 square foot addition to a smokehouse, in an R-ED (Residential: Environmental Development) Zoning District, is hereby **GRANTED;**

Provided, however, that:

1. The variance shall apply only to the smokehouse as described in the Petition and 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.