

IN THE MATTER OF : BEFORE THE
CROMWELL BUILDERS, INC. : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
 : HEARING EXAMINER
 : BA Case No. 11-021N&V

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DECISION AND ORDER

On September 8, 2011, 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 Cromwell Builders, Inc. for confirmation and expansion of a nonconforming use (a detached garage) in an R-20 (Residential-Single) Zoning District, pursuant to Sections 129.D & E of the Howard County Zoning Regulations (the "Zoning Regulations"). The Petitioner is also requesting variances to increase the maximum 600 square foot area imposed by Section 128.A.12.a for a detached garage to about 3,041 square feet and to increase the 15-foot maximum height for an accessory building to about 32 feet 3 inches for an addition to the detached garage.

The Petitioner certified to complying with the notice, posting, and advertising requirements of the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure. Dylan Springman, Esquire, represented the Petitioner.

Michael Ponsi, Cromwell Builders, Inc., testified for the Petitioner. No one appeared in opposition to the petition.

The Petitioner introduced the exhibits as follows into evidence.

1. Photograph of accessory building showing oil tank
2. Letter from Warthen heating and oil company, February 23, 2011
3. Aerial photograph of property, 2010
4. Zoom of aerial photograph, 2010

FINDINGS OF FACT

Based upon the TSR, the petition, and site visits, the Hearing Examiner finds as follows:

1. Property Identification. The subject property is situated on the west side of Landing Road about 4,000 feet northwest of Montgomery Road, and is known as 5434 Landing Road (the "Property.") The Property is located in the 1st Election District and is identified as Tax Map 31, Grid 23, Parcel 236.

2. Property Description. The generally square, 3.1-acre Property is the site of an historic house known as the "Lorenz House," which is listed in the Howard County Historic Sites Inventory (HO-150). To this building's southwest is an approximately 23-foot by 78-foot detached, two-level accessory building described in the petition as being used for a parking garage and for "residential recreation and entertainment purposes" (the Accessory Building).

The driveway access enters the Property near the northeast corner, then rises generally to the southwest, to the rear of the house. The driveway continues to curve northwest to the side of the Accessory Building and a tennis court to the west. Large trees dot the hilly Property.

From the high ground of the tennis court, the elevation drops about 44 feet to the low areas along Landing Road.

3. Vicinal Properties. The isolated Property is surrounded to the north, west, and south by the Howard County Rockburn Branch Park and sports fields to the west. To the east, across Landing Road, is state park land.

4. Roads. Landing Road has two travel lanes and about 20 feet of paving within a variable width right-of-way. Sight distance is not an issue.

5. Water and Sewer Service. The Property is served by public water and private sewer.

6. General Plan. Policies Map 2000-2020 of the 2000 General Plan designates the Property as "Residential." The General Plan Transportation Map depicts Landing Road as a Minor Collector.

7. Zoning History. There is no record of any Board of Appeals, Zoning Board, or Department of Planning and Zoning administrative hearing cases for the Property.

8. Nonconforming Use Confirmation. The Petitioner requests confirmation of a nonconforming use for the Accessory Building.

Date of Nonconformance. The petition states that the Accessory Building use became nonconforming on January 2, 2005. The TSR explained the correct date is January 4, 2005.

Documentation provided to establish existence of the use on the date it became nonconforming. The items submitted with the petition included affidavits as

documentation. The TSR states DPZ aerial photographic information for the Property clearly depicts the Accessory Building in 1984, 1998, 2002, 2004, and 2006. The TSR also reasons it is likely an accessory building of this size was used for a number of residential purposes over time. The nonconforming use petition states the Accessory Building has been used as a parking garage (lower level) and the second level for residential recreation and entertainment purposes since 2005.

9. Proposed Expansion of the Nonconforming Use. The nonconforming use petition states the property owner is proposing to renovate a portion of the Accessory Building and to add a third level. The Building's size would increase from about 2,256 square feet to 3,041 square feet. Building height would increase from 22 feet, 7 inches to 32 feet, 3 inches. The plans submitted with the petition indicate the lower level will be used for storage. The second level plan depicts two dens, a changing room, a wet bar, and a workout space. The third level plan depicts a yoga room, a second changing room and deck space. According to the TSR, the expansion represents a 34.8% increase in the existing floor area.

Additionally, although the plans depict two changing rooms, they appear to be full bathrooms. Both "changing rooms" depict a toilet, a sink, and a shower, bathtub or some other means of bathing for sanitation.

10. Request for Variances. The Petitioner is also requesting variances to increase the maximum 600 square foot area imposed by Section 128.A.12.a for a detached garage to about 3,041 square feet and to increase the 15-foot maximum height for an accessory building to about 32 feet 3 inches for an addition to the detached garage.

CONCLUSIONS OF LAW

I. Confirmation of Nonconforming Uses (Section 129.D)

The Hearing Authority may confirm the factual existence of a nonconforming use through petition. The petition must include the following proof of nonconformance.

a. A statement and plans or other illustrations fully describing the magnitude and extent of the nonconforming use.

The Petitioner provided statements, plans and illustrations fully describing the magnitude and extent of the nonconforming use as the Accessory Building on the Property.

b. A statement identifying the date the use became nonconforming to the use provisions of the Zoning Regulations.

The petition incorrectly states the use became nonconforming as January 2, 2005. According to the TSR, however, the correct date is January 4, 2005, when the Zoning Regulations were amended to establish new requirements in Section 128 for detached accessory garages, including limiting the size of garages to 600 feet in all districts except for the RC and RR districts and prohibiting full baths and residential uses in all accessory garages.

c. If the date it became nonconforming and clearly demonstrating the continued and uninterrupted use or operation thereof from the specified date to the time of filing the application. The burden shall be on the property owner to establish the existence of the nonconforming use.

The Petitioner provided affidavits as documents substantiating the existence of the use on the date it became nonconforming. Additionally, the TSR reasons it is likely a building of this size was used for a number of residential purposes over time. The Petitioner also introduced

into evidence a letter from a fuel company stating that it had service the Accessory Building since 2003.

II. Extension, Enlargement, or Alteration of Nonconforming Uses (Section 129.E)

The Hearing Authority may authorize the extension or enlargement of a nonconforming use or the alteration of a structure containing a nonconforming use, with or without conditions, provided the Petitioner demonstrates compliance with five standards.

a. That any changes or additions to the activities taking place in connection with the nonconforming use will not change the use in any substantial way;

The proposed enlargement and addition includes increasing the size of the Accessory Building and adding a third level to intensify the current recreation and entertainment use, including two dens, two changing rooms, a wet bar, a workout space, a yoga room, and two changing rooms.

The two changing rooms appear to be full bathrooms. In this context, the TSR explains it considers the current format of Zoning Regulations Section 128.A.12. to be in error and that as a policy has enforced the requirement that full baths in accessory garages are prohibited in all residential districts.¹ Because the Petitioner presented no evidence that there are two legally nonconforming full bathrooms that could be continued or improved, the Hearing Examiner concludes the two changing rooms as depicted on the plan would substantially change the use

¹ Section 128.A.12.(b)(3) is formatted as follows.

(3) Setbacks:

(a) The minimum rear setback for detached garages shall be 20 feet.

(b) The minimum side setback for detached garages shall be 20 feet for lots less than 3 acres and 30 feet for lots 3 acres or greater.

(c) Full baths and commercial or residential uses are not permitted in detached garages.

and is therefore approving the use subject to the condition that no bathtub or shower or any other means of bathing be installed as part of the expansion.

Subject to this condition and the condition that the Accessory Building not be used for commercial purposes or as a dwelling unit, the proposed intensifications and extensions of use will not change the use in any substantial way, in accordance with Section 129.E.1.a.

b. That an enlargement may not exceed 100 percent of the gross floor area of structures or 100 percent of the gross acreage in the case of nonconforming land, above that which legally existed at the time the use first became nonconforming;

The Petitioner is proposing to enlarge the Accessory Building by adding about 785 square feet of new floor area, which represents a 34.8 percent increase in the existing floor area, in accordance with Section 129.E.1.b.

c. That the outdoor land area occupied by a nonconforming use may be enlarged only to provide additional parking area;

This section is inapplicable as no outdoor use is proposed.

d. That an enlargement would not cause a violation of the bulk regulations for the zoning district in which the property is located;

The proposed expansion would cause a violation of the bulk regulations in the R-20 zone. However, the Petitioner has requested variances for the increase in size and height, which the Hearing Examiner is granting, in accordance with Section 129.E.1.d.

e. That the extension, enlargement or structural alteration would not cause an adverse effect on vicinal properties.

The Accessory Building is well separated from the adjoining properties and all nearby properties are public parks, in accordance with Section 129.E.1.e.

III. Request for Variances

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made. Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.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.

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. 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).

While existing structures may not be considered "unique" features of a property, the

existing, lawfully noncomplying Accessory Building is a noncomplying structure and therefore constitutes a unique physical condition of the Property, 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.

According to the variance petition, the Accessory structure was built in 1929. Subject to the conditions that the Accessory Building shall not be used for commercial uses or as a dwelling unit, and that no full bathrooms are installed as part of the expansion, the requested variances will not alter the character of the neighborhood or district in which the lot is located nor substantially impair the appropriate use or development of the adjacent park property adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a.(2).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 lawfully noncomplying size and height of the Accessory Building and was not created by the Petitioner, in accordance with Section 130.B.2.a.(3).

² Zoning Regulations Section 103.A.72 defines a dwelling unit as "[a] single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation."

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

With the exception of what appears to be full bathrooms, the proposed expansion is a reasonable size. Within the intent and purpose of the regulations, then, the variances are the minimum necessary to afford relief, in accordance with Section 130.B.2.a.(4).

ORDER

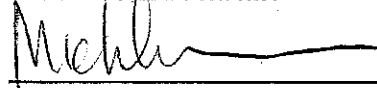
Based upon the foregoing, it is this **20th day of September 2011**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Cromwell Builders to confirm and expand a nonconforming use (a detached garage) in an R-20 (Residential-Single) Zoning District and its request for variances to increase the maximum 600 square foot area imposed by Section 128.A.12.a for a detached garage to about 3,041 square feet and to increase the 15-foot maximum height for an accessory building to about 32 feet, 3 inches for an addition to the detached garage is **GRANTED**;

Provided, however, that:

1. The two changing rooms depicted on the plans submitted with the petition shall not include the installation of any bathtub, shower, or any other means of bathing as part of the expansion.
2. The Accessory Building shall not be used for commercial uses or as a dwelling unit.
3. The Petitioner shall obtain all required permits and approvals.
4. The nonconforming enlargement shall apply only to the land area, uses, and structures as described in the petition and plan submitted, and as conditioned, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Date Mailed: 9/20/11

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.