

IN THE MATTER OF : BEFORE THE
DAVID AND AUDREY OGDEN : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
 : HEARING EXAMINER
 : BA Case No. 11-017V

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DECISION AND ORDER

On August 1, 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 David and Audrey Ogden for a variance to reduce the required 30-foot structure setback to 4 feet for an attached garage in an R-12 (Residential: Single Cluster) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to compliance with the notice and posting requirement of the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Dylan Springmann, Esquire, represented the Petitioners. Gary Lane and David Ogden testified in support of the petition. Ralph Bennie and Roger Lane Sandlin testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. Property Identification. The subject property is located on the southwest corner of the north side of Lyon Avenue about 580 feet west of all Saints Road. The subject property is

officially identified as Tax Map 50¹, Grid 20, Parcel 413, Lot 313 and the address is 9860 Lyon Avenue (the Property).

2. Property Description. The 0.23-acre Property is 50 feet wide and 200 feet deep. It is improved with a 28 by 59-foot single-family detached dwelling and porch sited 20 from the front lot line. There is an existing 9.5-foot wide gravel line running along the western side property line.

3. Adjacent Properties. The R-SC zoned properties on the same side of Beechfield Avenue are improved with single-family semi-detached dwellings. The properties to the east and across the street appear to be the same size. These properties are each improved by a single-family detached dwelling. The two properties to the west appear to be wider and they have detached rear garages. Behind the Property is an open space lot.

4. The Variance Request. The Petitioner is proposing to construct a 35-foot by 60-foot attached garage to the rear of the dwelling. Because the garage would encroach into the 30-foot rear structure setback imposed by Zoning Regulations Section 110.D.4.d.(1)(c)(i), the Petitioner is seeking a variance to reduce the setback to 4 feet.

5. Land surveyor Gary Lane testified that the Property is narrow, being only 50 feet wide, and unique, being smaller than other lots in the neighborhood. Petitioner's Exhibit 1. The minimum lot width in the zoning district is currently 60 feet. He further testified that the lots to the west are wider and contain more square footage. The Petitioner's practical difficulty is caused by the lot's narrow width, which causes any new construction to be pushed to the rear.

¹ The technical staff report notes the Property is actually on Map 47.

Concerning DPZ's comments about the proposed variance about the potential impact of the variance on the character of the neighborhood, he testified that many area properties have rear garages close to the rear property line. Referring to Petitioner's Exhibit 2, he explained that the two western properties have garages very close to the rear property lines. A property to the east also has a large structure in the rear portion of the property. He described the rear open space lot as being in floodplain.

6. According to Mr. Lane, the requested variance is the minimum necessary to allow the Petitioners the needed distance to access the garage. In response to a cross-examination question about why the requested variance was the minimum necessary Mr. Lane stated there was a fire hydrant in front, which eliminates parking, the Petitioners also need room to store "stuff" because they have no basement. There is a large garage a couple of blocks away.

7. Mr. Lane further testified that the Petitioners share a common driveway with the adjoining neighbors to the west. The fire hydrant could be accessed to pull a hose to the rear. There is plenty of room on the common driveway to access the rear. On cross-examination, he agreed that he was aware of any fire department policy that would allow them to go onto an adjoining property.

8. David Ogden testified that the encroachment is needed for a garage large enough to store materials (lawnmowers, a truck) as well as cars belonging to the Petitioners and their two children. The garage would provide reasonable storage and parking needs.

9. On cross-examination and recall, Mr. Ogden testified to being a retired county bus driver and is not planning to store or park buses in the garage.

10. Ralph Bennie testified to residing at 9870 Lyon Avenue, the brown house with a detached garage depicted in Petitioner's Exhibit 2. His lot and the lot next to him are 75 feet wide. The dwellings were built in the mid-1950s. It was his testimony that there was no common driveway with the adjoining property. He is concerned the Petitioner is planning to park or service school buses in the garage. His garage is about 10 feet from the rear lot line and there is a lean-to behind it. Some of the houses on the south side of the street have basements.

11. Roger Wayne Sandlin testified to owning property across the street. He was concerned about wildlife being disturbed and does not like the size of the garage.

CONCLUSIONS OF LAW

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).

In this case, there is no dispute that the end lot is small and narrow, relative to neighboring lots. In fact, the 50' wide by 200' deep lot is a substandard lot because it is less than the minimum 60-foot wide minimum lot size required in the R-SC zone. Consequently, I conclude the small size of the lot and its narrowness are unique physical conditions causing the Petitioner practical difficulty in complying with the setback requirements, 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.

The proposed garage will be about the same distance from the rear property line as garages on two vicinal 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.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 width of the lot and was not created by the Petitioner, in accordance with Section 130.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 proposed garage the minimal size needed to store materials, permitted vehicles and to provide access. Within the intent and purpose of the regulations, then, the variance is the minimum necessary to afford relief, in accordance with Section 130.B.2.a.(4).

ORDER

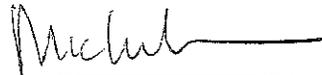
Based upon the foregoing, it is this 8th Day of August 2011, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the variance petition of David and Audrey Ogden to reduce the required 30-foot structure setback to 4 feet for an attached garage in an R-SC (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 submitted and as testified to, and not to any other activities, uses, structures, or additions on the Property.
2. The Petitioners shall install a lawful perimeter privacy fence along both side lot lines, from the point where the garage is closest to the dwelling and continuing to the rear lot line, and along the rear lot line.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFavre

Date Mailed: _____

8/9/11

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.