

IN THE MATTER OF : BEFORE THE
JOHN M. SKINNER : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 16-017V

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DECISION AND ORDER

On October 13, 2016, 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 John M. Skinner (Petitioner) for a variance to reduce the rear yard 10.0 feet to 4.0 feet for an accessory shed structure in an R-20 (Residential: Single) zoning district, filed pursuant to § 130.0.B.2 of the Howard County Zoning Regulations (the HCZR).

The Petitioner 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. Petitioner was not represented by counsel. John Skinner testified in support of the petition. No one appear in opposition to the petition.

A Preliminary Matter

At the outset of the hearing, the Hearing Examiner explained to Petitioner that she consistently denies variance petitions proposing a setback less than 4 feet from a property line (with limited, site specific exceptions). This policy ensures that a setback variance, when granted, comports with the neighborhood and public welfare standards set forth in HCZR § 130.0.B.2.a(2), the second criterion for evaluating a bulk regulations variance petition. This

policy further implements compliance with this criterion because it is intended to preclude property owners from encroaching onto the adjacent property.

After some discussion with Petitioner, and for the reasons set forth below, Petitioner amended the variance petition and Variance Plan to request a four-foot setback from the rear lot line. The Hearing Examiner determined the amendment was not substantive within the meaning of Hearing Examiner Rule 9.5 and therefore could be admitted as evidence during the hearing. The Amended Variance Plan was introduced as Exhibit 1.

FINDINGS OF FACT

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

1. Property Identification. The subject property is located on the west side of West Stayman Drive, about 609 feet west of Maple Rock Drive. It is located in the 2nd Election District, identified as Tax Map 0017, Grid 0010, Parcel 543, Lot 9 and is known as 9237 W. Stayman Drive (the Property). The Property is part of Section One of the Wilton Acres Addition subdivision.

2. Property Description. The 0.575-acre Property is irregularly shaped. The northern, side lot line is 200 feet deep and the southern side lot line is 212 feet deep. The rear lot line is 155 feet wide. The front lot line is 71 feet wide and curved. Due to this curvature, the single-family dwelling on the Property is located 10-15 feet deeper into the Property. The Property is accessed from a driveway on the north side of the dwelling. Multiple BGE lines run across the back section of the Property.

3. Adjacent Properties. Adjacent properties are also zoned R-20. The northern and southern properties are each improved with a single-family detached dwelling. To the Property's rear is a BGE right-of-way (ROW) with transmission towers.

4. The Requested Variance. Petitioners are requesting approval to reduce the 10-foot rear setback imposed by HCZR § 108.0.D.4.c(1)(c).ii to 4.0 feet for a 10.0-foot deep, 16.0-foot wide (160sf) accessory shed structure. The petition does not denote the height of the shed, which is subject to a 15-foot height limit.

5. John Skinner testified that he wants to locate the shed where it would not be located under the utility lines.

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 variances comply with §§ 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 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's shape is a unique physical condition causing practical difficulty in complying with the current setback 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.

There is no evidence of the proposed variance altering the essential character of the neighborhood in which the lot is located or substantially impairing the appropriate use or development of adjacent property, or being detrimental to the public welfare. The adjoining lot is a BGE ROW and the shed would be located approximately 25 feet from the north lot line.

(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 regulations and was not created by Petitioners.

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

The accessory shed structure is a reasonable size.

ORDER

Based upon the foregoing, it is this **14th day of November 2016**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of John M. Skinner for a variance to reduce the rear setback from 10 feet to 4.0 feet for a 10.0-foot by 16.0-foot, 160sf accessory shed structure in an R-20 (Residential: Single) zoning district, is hereby **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the approximately 160sf accessory shed structure and use depicted on the Amended Variance Plan and not to any other activities, uses, structures, or additions on the Property.
2. Petitioners shall obtain all necessary permits.
3. The plot plan submitted to the Department of Inspections, Licenses and Permits with the building permit application shall reference this decision and order approving a 4-foot rear setback. The plot plan shall accurately depict the location of the accessory shed structure as being four feet from the rear lot line and shall accurately depict the shed structure as 10-foot by 16-feet in size (160sf). The plot plan shall note the height of the accessory shed structure, which must be less than 15 feet.

**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.