

IN THE MATTER OF	:	BEFORE THE
THOMAS A. BARNES	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 08-014V

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### **DECISION AND ORDER**

On June 9, 2008, 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 Thomas A. Barnes for a variance to reduce the minimum lot width from 100 feet to 75 feet to create a lawful lot for a home-based contractor accessory use in an RC-DEO (Rural Conservation Density Exchange Option) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised<sup>1</sup> 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.

Philip C. Dorsey, Esquire, represented the Petitioner. Sang Oh, Esquire, represented Davis Branch Estates. Thomas A. Barnes testified in support of the petition. Deborah Vigliotti and Greg Cole testified in opposition to the petition.

### **FINDINGS OF FACT**

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

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<sup>1</sup> Petitioner acknowledged the second advertisement was not published until 10 days before the hearing, rather than the required 15. I concluded Petitioner made a good faith effort to comply with advertising requirements. Davis Branch Estates had no objection.

1. The subject property is situated on the south side of Cavey Lane about 900 feet east of Woodstock Road and is also known as 10379 Cavey Lane (the "Property"). The Property is located in the 3<sup>rd</sup> Election District and is identified on Tax Map 11, Grid 13, as Parcel 28.

2. The 2.56-acre Property is a long, irregularly shaped lot. The front lot line and front section are about 75± feet wide for some distance. The Property then widens to 125 feet. It is accessed by a 10-foot wide driveway near the eastern lot line, which leads to a dwelling situated within the 75-foot wide front section. The stone and gravel driveway continues toward the rear section of the lot and ends in a parking area behind a 25'-wide by 64'-deep, 14-foot high pole barn. According to a note on the plot plan attached to the petition, this barn is situated 50 feet from the side lot line and 150 feet from the rear lot line.

3. Vicinal Properties. All adjoining properties are also zoned RC-DEO and are in residential and farming use.

4. The General Plan's 2000-2020 Policies Map designates the Property as a "Rural Conservation" Area.

5. The Petitioner is seeking a retroactive variance to reduce the minimum lot width from 100 feet to 75 feet for a home-based contractor accessory use. The petition states the Petitioner obtained a County permit for the accessory use in 2006.

6. The petition states the Property was created on October 27, 1964.

7. Mr. Barnes testified his business would suffer because of the increased traveling involved if the business were not located on the Property. He stated that he did not operate heavy equipment on the property. He uses equipment to unload or load materials on the Property. He stated he planted evergreen trees along the rear property lines and diligently replaces them when necessary. The trees reduce the visibility of the operation from neighboring properties.

8. Mr. Barnes stated that no other lots on Cavey Lane had a 75-foot lot width. During cross-examination, Mr. Oh introduced into evidence the deed conveying the Property to Mr. Barnes in 2001. According the deed description, the Property at the front or north lot line is 75.34 feet wide. The west lot line widens slightly to the south for about 200 feet, then widens again for 98 feet. From here, the lot is 125 feet wide for another 689± feet. The south or rear lot line is 125 feet wide and the linear east lot line is about 984 feet deep.

9. In reference to the Petitioner's testimony about the home-based contractor permit, Mr. Oh questioned Mr. Barnes about a February 20, 2008 letter from Anthony LaRose, Zoning Supervisor in the Department of Planning and Zoning ("DPZ").<sup>2</sup> He quoted from the bottom paragraph: "Because the property did not comply with the zoning regulations in effect at the time it was created and does not comply with the current zoning regulations, it does not meet the definition of a lot or parcel and, therefore cannot support an accessory use."<sup>3</sup>

10. In response to questioning about the Petitioner's testimony about other area lot sizes, Mr. Oh also introduced into evidence an area tax map and five deeds and tax assessment forms from parcels that either adjoin the Property or are located along Woodstock Road, which at its

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<sup>2</sup> Opponent Davis Branch Estates did not seek to introduce the letter into evidence. Its contents are therefore gleaned from the testimony.

<sup>3</sup> A lot or parcel is "[a] piece of land described in a Final Plat or Deed and recorded in the Land Records of Howard County in accordance with the laws and regulations in effect at the time of recordation." Zoning Regulations Section 103.88. When the Property was created by deed in 1964, the Zoning Regulations required the then R-40 zoned parcel to have a minimum width of 125 at the building line. The current Zoning Regulations require a lot in the RC Zoning District to have a minimum lot width of 100 feet *at the building restriction line* for lots 3 acres or less in size (emphasis added). Section 104.E.3. A "building restriction line" is "[a] line established on a lot to indicate the setbacks required by the Zoning Regulations for the zoning district in which the lot is located or the setbacks required by the Subdivision and Land Development Regulations, if more restrictive." Section 103.19.

Applying this definition, the 100-foot minimum lot width for a lot or parcel in an RC zoning district is measured at the front setback for the principal structure. As set forth in Section 104.E.4, for lots 3 acres or less in area the setback for a principal structure is 75 feet from a collector or arterial public street right-of-way for a principal structure, and 50 feet from other streets. Because Cavy Road is a local road, the Property must be at least 100 feet wide 50 feet from the Cavey Lane right-of-way.

intersection with Cavey Lane lies about 900 feet from the Property (Opponents Exhibits 3 and 4). The exhibits show these parcels are all 100 feet wide at the building restriction line.

11. In response to questioning about the unnecessary hardship he would suffer, Mr. Barnes stated he could keep the house. He also said he needed the variance for the accessory use and to meet the road or lot frontage requirement. He would suffer economic hardship if the variance were not granted because he spent \$75,000 on trees and a pole barn. He also said he uses one truck in his business.

12. Deborah Vigliotti, an adjoining property owner, testified the noise from the home-contractor business rattles her windows and causes excessive noise. Employees arrive before 7:00 a.m. and park outside the business parking area. The use disturbs her peace and enjoyment of her property and impairs the use of her property. In response to questioning, she testified her children's window is about 30 yards from the property line. She also testified the Petitioner often loads a bobcat onto his truck, which creates very loud noises, sometimes on weekends. He has also left the truck near his home at night. She also said the driveway is excessively close (8 feet) to her home, which is set back into her lot.

13. Greg Cole testified that a property should not qualify for a home-contractor business after it is purchased and the County should not have granted the Petitioner a permit. He lives about 350 feet away and he hears noises at all hours. He stated that the dumpsters and storage materials are bad for the community and should not be permitted.

#### **CONCLUSIONS OF LAW**

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

- (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.
- (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 necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance does not comply with Sections 130.B.2.a(1), (2) and (4) and therefore must be denied.

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).

The record shows the Property is not 100 feet wide 50 feet from the right-of-way, but somewhere between around 75 wide. This front lot width is 25± feet narrower than the smaller

lots in the neighborhood, according to Opponent's Exhibits 3 and 4. I therefore conclude the Property's narrowness in its front section is a unique physical condition.

The Petitioner purchased the Property subject to the restriction sought to be varied.

This uniqueness notwithstanding, the determinative issue in this case is whether the Property's unique shape causes the Petitioner practical difficulty or unnecessary hardship in complying with the 100-foot lot width requirement at the building restriction line. In my view, the evidence, as discussed below, does not establish the existence of an unnecessary hardship or practical difficulty. I also conclude the Petitioner has not demonstrated practical difficulty or unnecessary hardship where the Property is already improved by an existing dwelling. This conclusion is consistent with the line of cases interpreting "practical difficulty" or "unnecessary hardship" as a denial of reasonable use standard. *See Belvoir Farms Homeowner Association, Inc. v. North*, 355 Md. 259, 734 A.2d 227 (1999) (discussing the interpretation of variance standards). *See also Citrano v. North*, 123 Md. App. 234, 717 A.2d 960 (1997) (holding board of appeals properly denied variance for a deck accessory structure in a 100-foot critical area, finding no unwarranted hardship where property was already developed with a single family dwelling and related improvements), *citing North v. St. Mary's County*, 99 Md.App. 502, 638 A.2d 1175 (1994) ("If reasonable use exists, generally an unwarranted hardship would not.") *North v. St. Mary's*, 99 Md. App. at 517-18, 638 A.2d 1175.<sup>4</sup>

The Petitioner has not persuaded me 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

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<sup>4</sup> In *Belvoir Farms*, The Court of Appeals interpreted the terms "unwarranted hardship" and "unnecessary hardship" to be generally indistinguishable. *Belvoir Farms Homeowner Association*, 355 Md. at 275-276, 734 A.2d 227.

welfare.<sup>5</sup> This conclusion is necessarily compelled by the absence in the record of substantial evidence concerning the nature of the proposed home-based contractor use being proposed. The petition states the "intended use of the property is residential with an accessory use as a home-based contractor" and refers to the 2006 permit the Petitioner obtained for the home-based business. In Section 7 of the petition, the Petitioner describes the peculiarities of the lot when created, and then simply recites the criteria for granting the variance, offering no explanation as to how the application of the Zoning Regulations would result in practical difficulties or hardships in complying strictly with the bulk regulations. In his testimony, the Petitioner said he would suffer economic hardship if the variance were denied and that it would be more difficult to locate the business elsewhere.

What we know about the proposed accessory use must be gleaned from the plot plan attached to the petition. This plan is a rough illustration depicting the location of the residence, driveway and parking area, and the accessory use pole barn, but it provides no specific information about their location. A note on the plan states the business operation meets the obligatory setbacks for the use. The Petitioner also testified that he uses only one truck in the business, and that he would suffer economic loss if the variance were denied. There is no evidence about the intended residential use of the Property.

There is uncontradicted and credible evidence that the accessory use will substantially impair the appropriate use of adjacent property. According to an adjoining neighbor, loud noises from the home-contractor business rattle her windows. Work occurs at all hours. Employees arrive very early and park outside the designated parking area. The neighbor also stated the driveway is

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<sup>5</sup> In this regard, I note DPZ did not make a recommendation in its comments on the variance, stating, "[t]he Division of Public Services and Zoning Administration is unsure of the purpose for this variance request."

excessively close (eight feet) to her home, which is set back deep into her lot, close to the accessory use.

Because the Petitioner may continue to use the Property for his residence, I am also unpersuaded that the requested variance is the minimum necessary to make reasonable use of the Property. This conclusion, too, is compelled by the insufficiency of evidence about the home-based contractor accessory use.



**ORDER**

Based upon the foregoing, it is this **30th day of June 2008**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Thomas A. Barnes for a variance from the 100-foot minimum lot width at the building restriction line for a residence and home-based contractor accessory use is **DENIED**.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

  
**Michele L. LeFaivre**

**Date Mailed:** 7/1/08

**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.