

IN THE MATTER OF	:	BEFORE THE
<b>MICHAEL AND JANETTE FINE</b>	:	HOWARD COUNTY
Petitioners	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 16-019V

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**DECISION AND ORDER**

On October 6, 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 Michael and Janette Fine (Petitioners) for variances to increase the maximum accessory structure square footage for a detached garage, garage addition and an existing pool shed to approximately 2,115 square feet and to increase the maximum building height of an accessory structure in an R-20 (Residential: Single) zoning district to 19.6 feet, filed pursuant to § 130.0.B.2 of the Howard County Zoning Regulations (the HCZR).

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. Petitioners were not represented by counsel. Michael Fine and Mark Koski testified in support of the petition. No one appeared in opposition to the petition.

**Preliminary Matters**

During the proceeding, the Hearing Examiner took notice that the plan submitted with the petition did not depict the dimensions of the proposed detached garage addition, did not include the square footage of the existing pool shed in the calculation of the accessory

structure variance request and did not include a variance request to increase the maximum height of the detached garage (existing and as proposed to be enlarged). As the Hearing Examiner explained, this information should have been expressly noted in the petition and on the plan. Because of this, the Hearing Examiner informed Petitioners she was required to make a determination as to whether there was sufficient information in the petition and plan to determine: 1) what variances were actually needed, 2) whether the necessary variances would meet notice and posting requirements, and 3) whether any amended variance petition and plan would comport with Hearing Examiner Rules of Procedure 9.4 and 9.5.<sup>1</sup> As the Hearing Examiner explained to Petitioners, the sole purpose of this review was to negate the need for any future variances for the pertinent structures on the Property and to protect Petitioners' property rights against any future zoning amendments. After a colloquy with Petitioner's contractor Mark Koski on these matters, the Hearing Examiner allowed Mr. Koski to call out the needed information on the boundary survey location drawing submitted with the petition, which the Hearing Examiner identify as the variance plan (Petitioner's Exhibit 3). Mr. Koski also marked up a copy of the architectural plan drawings submitted with the petition as Petitioner's Exhibit 4A & B to call out the height of the existing detached garage and proposed addition.

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<sup>1</sup> Rule 9.4. Amendments to Petition. If a petitioner proposes to amend a petition during the course of the proceedings, the petitioner must submit the amendment as an exhibit.

Rule 9.5. Substantive Amendments. If the hearing examiner determines that an amendment to a petition is substantive, i.e., the amendment proposes a use that is likely to adversely impact vicinal properties, then the hearing examiner will suspend the hearing for at least three (3) weeks. At least two (2) weeks prior to the rescheduled hearing, the petitioner must send written notice of the amendment and of the date, time, and place of the next hearing to all adjoining property owners, and must file an affidavit of written notification with the clerk. In addition, the petitioner must post the property with notice of the date, time, and place of the next hearing for at least 10 days immediately before the next hearing in accordance with §2.203(b) of the Board's Rules. The hearing examiner may request that DPZ review and make recommendations on the amendment

After reviewing this information and in light of Mr. Koski's testimony, the Hearing Examiner determined the hearing could proceed as the "mark-ups" were reduced copies of the 4-page elevations submission included with the petition or contained the same information.

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Petitioner submitted into evidence the exhibits as follows.

1. Five photographs of existing detached garage
- 2A-G. Plan elevations and floor plans for detached garage addition
3. Variance Plan, October 4, 2016
- 4A-B. Plan elevations of detached garage depicting 19.6' height of structure

#### **FINDINGS OF FACT**

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

1. Property Identification. The 6.00-acre property is located in the 2<sup>nd</sup> Election District on the west side of White Rose Way about 960 feet north of Glastonbury Road. It is identified as Tax Map 0024, Grid 0013, Parcel 1162, Lot 4 and is known as 10250 Burleigh Cottage Lane (the Property).

2. Property Description. The Property is improved with a large, two-story single-family detached dwelling with multiple, relatively recent additions, including a multi-car attached garage on the north side of the dwelling, rear patios, and an in-ground pool and pool shed. These improvements are located in the easterly, front section of the property. To the north of the dwelling is a two-car detached garage. On this garage's south side is a fenced raised garden area. A gravel and asphalt driveway in the front portion of the Property runs past the dwelling and just past it, turns to the west to provide access to a large parking pad and the attached

garage. Beyond this western turn-off, the driveway continues north and turns a second time to provide access to the detached garage. The Property frontage is heavily planted with mature evergreen trees. To the west, beyond these improvements, the Property is mostly lawn. The north, south and southern perimeters are bordered by large trees and mature vegetation. Several fences delineate specific use areas.

3. Adjacent Properties. Adjacent properties are also zoned R-20. The properties to the north, northeast, and east across White Rose Way are residential lots in the Burleigh Manor subdivision. Each lot is improved with a single-family detached dwelling. The property to the south and west is Lot 3 of the same subdivision and it is the Historic Site HO-23 (Burleigh).

4. The Requested Variances (based on the October 6, 2016 variance plan admitted as Exhibit 3 and Petitioners Exhibit 4A&B, plan elevations of detached garage depicting 19.6' height of existing structure and addition).

A. *Requested variance from HCZR § 128.0.12.a(1)(a)*. This section imposes a 600-square foot lot coverage limit for accessory structures on a residential lot in the planned water and sewer service area and which is developed with a single-family detached dwelling. Petitioners' variance request was for approximately 2,035sf, a 1,430sf increase in lot coverage, and which did not include the 80sf area of the pool shed. With this area the total lot coverage would be 2,115sf.

Based on the October 4, 2016 variance plan (Exhibit 3) and Exhibit 2 E &F, there is currently an 80sf pool shed and an approximately 24'x26' (624sf) two-car detached garage on the Property, for a total lot coverage of 704sf (80+624=704). Petitioners seek to enlarge this

garage with an approximately 26'x28' addition (728sf), a 11'x21' greenhouse (231sf) and an approximately 21'x26' shed and carport (546sf), for a total approximate square footage of 2,115sf and is therefore requesting a variance for approximately 1,515 additional square feet for the two accessory structures.

B. *Requested variance from HCZR § 108.0.D.1.b.* Because § 108.0.D.1.b imposes a 15-foot maximum height limit for accessory structures, Petitioners are requesting a variance to increase the height of the detached garage accessory structure to 19'6" (19 feet, 6 inches.)

5. Mr. Koski introduced into evidence Petitioners Exhibit 1, 5 photographs of the existing detached garage. He also introduced Exhibit 2A-G, reduced copies of the elevations of the existing two-car detached garage and proposed additions submitted with the petition. Exhibit 4A-B contains additional elevations of the garage addition and call out the existing 19'6" height of the existing garage and the proposed 19' height of the addition. Exhibit 4 is also a reduced copy of the elevations submitted with the petition.

6. The Hearing Examiner questioned Petitioner Michael Fine about the proposed use of the detached garage as expanded, and particularly whether the garage would actually be used for residential purposes in violation of HCZR § 128.0.12.a(1)(b), which prohibits full baths, full kitchens and any residential habitation in accessory structures. This concern stemmed from a note in the petition stating that "R-20 zoning calls for approximately 2 units per acres, where this lot is 1 dwelling to 6 acres" and the fact that the addition includes a carport. When questioned, Mr. Fine testified that there is water for the detached garage and that there would be no bathroom, kitchen, sleeping quarters or residential use made of the structure, including

the addition. The garage will be used for storage, the carport will shelter bikes and he would like to do some car restoration work. The garage doors will not be removed or replaced.

### **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 variance complies with §§ 130.0.B.2.a(1) through (4), and therefore may be granted, as conditioned.

**(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).

During the 2013 Comprehensive Rezoning, the supplemental regulations contained in HCZR 128 were substantially revised in pertinent part to impose a 600-foot maximum square footage lot coverage for accessory structures on residentially zoned lots developed with single-family detached dwellings located in the public water and sewer service area. With the October 6, 2013 effective date of the Comprehensive Rezoning, the existing detached garage became lawfully nonconforming. (The record does not indicate when the pool shed was constructed.) Pursuant to § 128.0.B.2, additions to a noncomplying structure or use must comply with current bulk regulations unless a variance is granted.

Any variance to increase the 600sf accessory structure lot coverage restriction is not easily evaluated for compliance with the unique physical condition standard for granting variances. In this case, the task is lessened somewhat because the detached garage alone is lawfully noncompliant, and thus a unique physical condition causing practical difficulty. The same logic applies to the requested variance to increase the accessory structure 15-foot maximum height to 19.6 feet. The petition complies with § 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 addition and increase height are for a permitted purpose, storage and car repair, subject to the condition of approval that it will not be constructed or used for a residence. There is substantial vegetation on the Property and distance from nearby residences to buffer the use. The two variances, 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 § 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 maximum lot coverage and height regulations arises from the operation of the existing structures being noncompliant to the HCZR Site's and the large Property size, and was not created by the Petitioner, in accordance with § 130.0.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 expansion of the detached garage is a reasonable size for a storage structure on a 6.0-acre Property. Within the intent and purpose of the regulations, then, the variances are the minimum necessary to afford relief, in accordance with § 130.0.B.2.a.(4).



**ORDER**

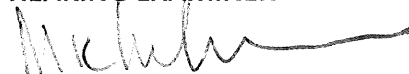
Based upon the foregoing, it is this **13<sup>th</sup> day of October 2016**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Michael and Janette Fine for variances to increase the maximum accessory structure square footage for a detached garage and garage addition and an existing pool shed to approximately 2,115 square feet and to increase the maximum building height of a detached accessory garage structure in an R-20 (Residential: Single) zoning district to 19.6 feet, is hereby **GRANTED**;

**Provided, however, that:**

1. The variances shall apply only to the uses and structures depicted on the October 6, 2016 variance plan and not to any other activities, uses, structures, or additions on the Property.
2. The plot plan and all materials submitted to the Department of Inspections, Licenses and Permits and/or other departments for permit review and approval shall contain a note stating as follows. "The detached garage accessory structure, including the addition approved in Board of Appeals Case No. 16-019V (decided October 13, 2016) is for storage, gardening and vehicle storage and maintenance only. No building permit shall be issued for a full bathroom, kitchen or sleeping quarters. The detached garage shall not be used as a residence. There shall be no heavying up of electricity for residential appliances."
3. Petitioner shall obtain all necessary permits.
4. The Department of Inspections, Licenses and Permits and the Zoning Administrative Division of the Department of Planning and Zoning shall review all building permit applications for the garage addition for compliance with Board of Appeals Case No. Case No. 16-019V.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**



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**Michele L. LeFavre**

**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.