

IN THE MATTER OF : BEFORE THE
CHARLES LEWIS, JR. : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 17-007V

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DECISION AND ORDER

On April 17 and June 29, 2017, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the variance petition of Charles Lewis, Jr. (Petitioner) for retroactive variances to reduce the 7.5 foot side setback to 3.4 feet and increase the 600sf accessory structure maximum lot coverage to 1,319sf for a detached garage in an R-A-15 (Residential: Apartments) zoning district, filed pursuant to § 130.0.B.2.a of the Howard County Zoning Regulations (HCZR).

The Petitioner certified to compliance with the advertising and posting requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure. Dylan Springmann, Esq., represented Petitioner. Charles Lewis and Chris Malagari testified in support of the petition. No one appeared in opposition to the petition.

Petitioner introduced into evidence the exhibits as follows.

1. 2014 Howard County aerial photograph and state property information about adjoining property owners
2. Notice of Violation
3. County GIS map showing county park property
4. Site development plan, Mundorf Property
5. Location drawing showing easement

6. Photographs of garage door
7. Photographs, garage interior
8. Photographs of flooding onto Property from Rockland at Rogers subdivision

FINDINGS OF FACT

Based upon the evidence presented at the hearing, the Hearing Examiner finds as follows:

1. Property Identification. The subject property is located in the second Election District on the west side of Rogers Avenue about 530 feet northwest of High Ridge Road and about 650 feet to the southwest of this access. It is identified as Tax Map 0017, Grid 0024, Parcel 618, and is known as 2938 Rogers Avenue (the Property). The Property is located in the R-A-15 (Residential: Apartments) zoning district.

2. Property Description. The 21,780sf Property is accessed from an approximately 650-foot driveway and easement area. From Rogers Avenue, this driveway runs in a straight southwesterly direction, and then curves to the northwest when it reaches the southerly property line. From here, the driveway extends into the property and ends in a paved area in front of the dwelling. The detached dwelling itself sits at an oblique angle to the front property line. The front portion of the Property is mostly lawn and the rear and side portions are lightly wooded. The detached dwelling itself sits at an oblique angle to the front property line. The front portion of the Property is mostly lawn and the rear and side portions are lightly wooded. The Property falls about 16 feet in elevation within the building restriction lines and the entire Property falls about 22 feet from north to south toward the adjoining Howard County owned park, which includes Sucker Branch.

3. Vicinal Properties. The parcels adjoining the Property's northwesterly and easterly sides are zoned R-20 (Residential: Single Family). The southwesterly and southeasterly properties are zoned R-A-15. The property to the east is improved with a single-family detached dwelling. The Howard County Department of Public Works owns the remaining wooded and unimproved surrounding property.

4. Zoning History. In BA 12-013V (decided September 12, 2012, the Hearing Examiner granted Petitioner a variance to reduce the 20-foot setback to two feet for a detached garage in an R-A-15 (Residential: Apartments) Zoning District. The Department of Planning and Zoning issued Petitioner a Notice of Violation on October 28, 2014 for an accessory structure over 600sf in violation of BA 12-013V and for an accessory structure exceeding the maximum 600sf lot coverage.

5. The Variance Requests (§§ 112.0.D.4.d(2) & 128.0.A.12.a(1)(a)). Petitioner is requesting retroactive variances to reduce the required 7.5' side setback to 3.4' and to increase the 600sf maximum lot coverage for accessory structures to 1,319sf for a detached garage.

6. Agency comments. The Department of Planning and Zoning's Zoning Division does not issue a technical report for this type of variance. The Department of Inspections, Licenses and Permits commented that a building permit is required for the detached garage.

7. Chris Malagari testified about the easement on the southeasterly side of the Property. Exhibits 4 & 5. A portion of the concrete driveway lies within this easement, as does a portion of the concrete area within the requested 3.4' side setback.

8. Charles Lewis testified to having modified the garage with the extensions to improve

its appearance and to accommodate his car restoration hobby. Photographic exhibits 6 & 7 show the interior of the garage.

9. Mr. Lewis further testified to having to perform "self-help" stormwater management because of considerable flooding/run-off from the Rockland at Rogers subdivision.

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, 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 conditions, 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 affect 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 topography limits the area for a reasonably sized garage. This circumstances cause practical difficulty in complying strictly with these regulations, in accordance with § 130.0.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.

There is no evidence of the granting of the variances altering the essential character of the neighborhood or district in which the lot is located, substantially impairing the appropriate use or development of adjacent property, or being 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 petitioner did not create the practical difficulties, in accordance with § 130.0.B.2.a (3). The 600sf maximum lot coverage applicable to accessory structures in residential zones itself causes practical difficulties when, as here, the area includes an overhang that helps direct water away from the garage.

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

The requested relief is for a reasonably sized detached garage, in accordance with § 130.0.B.2.a (4).

ORDER

Based upon the foregoing, it is this **18th Day of July 2017**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Charles Lewis, Jr. for retroactive variances to reduce the 7.5 foot side setback to 3.4 feet and increase the 600sf accessory structure maximum lot coverage to 1,319sf for a detached garage in an R-20 (Residential: Single) zoning district, is **GRANTED**;

Provided, however, that:

1. The variances shall apply only to the uses and structures as described in the petition and as depicted on the variance plan and not to any other activities, uses, structures, or additions on the Property.
2. The Petitioner shall obtain all required permits. The permit plot plan shall accurately depict the location of the structure, approved setback and accessory structure lot coverage.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



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.