

IN THE MATTER OF : BEFORE THE  
BETTY WEICKGENANNT : HOWARD COUNTY  
Petitioner : BOARD OF APPEALS  
 : HEARING EXAMINER  
 : BA Case No. 16-011V

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**DECISION AND ORDER**

On August 1, 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 Betty Weickgenannt (Petitioner) for a variance to reduce the 60-foot rear setback to 38 feet for a garage addition in an RR-DEO (Rural Residential: Density Exchange Option) Zoning District, filed pursuant to § 130.0.B.2 of the Howard County Zoning Regulations (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. Robert Weickgenannt testified in support of the petition.

**A Preliminary Matter**

At the outset of the hearing, The Hearing Examiner queried Petitioner about the size and location of three accessory structures shown on the Variance Plan to determine if the Plan should be amended to include variances for them. After reviewing the information provided by Robert Weickgenannt, the Hearing Examiner determined none was necessary. The size and location of these structures are: 1) playhouse: 6'x8' (48sf), located 10 feet from rear property line; 2) storage

shed: 8'x10' (80sf), located 25 feet from southeasterly lot line and; 3) gazebo 8'x12' (96sf), located 70 feet from the southeasterly lot line.<sup>1</sup> The total square footage of these structures is 224sf, which is less than the 2,200sf maximum permitted in the RR zoning district.<sup>2</sup>

**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 on the east side of a private access easement, about 275 feet north of the terminus of Queen Street. It is identified as Tax Map 0041, Grid 0013, Parcel 67 and is also known as 11930 Queen Street (the Property).

2. Property Description. The somewhat triangular, irregularly shaped Property is improved with a two-story single-family detached dwelling and attached garage located in the

<sup>1</sup> HCZR § 105.0.E.4. Minimum setback requirements – structures

a. Lots 3 acres or larger:

- (1) Principal structures - from collector or arterial public street right-of-way ..... 75 feet
- (2) Front..... 75 feet
- (3) Side
  - (a) From public street right-of-way..... 60 feet
  - (b) Principal structure from lot line ..... 30 feet
  - (c) Accessory structure from lot line
    - 1. 200 square feet or greater ..... 30 feet
    - 2. Less than 200 square feet ..... 10 feet
- (4) Rear
  - (a) All structures - from public street right-of-way..... 75 feet
  - (b) Principal structure..... 60 feet
  - (c) Accessory structure..... 10 feet

<sup>2</sup> HCZR § 128.0.12. Regulations for detached accessory structures on residentially zoned lots developed with single-family detached dwellings

a. Size restrictions

- (1) The maximum cumulative lot coverage permitted for all of the accessory structures located on any given residential lot developed with a single-family detached dwelling is:
  - (a) 600 square feet for a lot in the planned public water and sewer service area.
  - (b) 1,200 square feet for a lot in the RC or RR district which is 2 acres or less
  - (c) 2,200 square feet for a lot in the RC or RR district which is greater than 2 acres.

northwesterly section of the Property. Behind the dwelling is a large patio and swimming pool. A driveway off the northwesterly easement provides access to the dwelling and attached garage on the west side of the dwelling.

3. Vicinal Properties. Adjoining properties are also zoned RR-DEO. The northern property is an approximately 76-acre utility right of way (ROW). To the east is the Pindell School ROW. To the south are Lots 9-15 of the King's Manor Subdivision, each lot being improved with a single-family detached dwelling.

4. The Variance Request. Petitioner is requesting a variance from HCZR § 105.E.4.a(4)(b) to reduce the rear setback from 60 feet to 38 feet for a three-car garage addition. The 26'x 40' garage would be located on the westerly side of the dwelling. It would be 18 feet in height.

5. Robert Weickgenannt testified to the rear setback having been established based on the original plan for the house being oriented toward Pindell School Road.

#### CONCLUSIONS OF LAW

The standards for variances are contained in HCZR § 130.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.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). With respect to the first prong of the variance test, the Maryland courts have defined “uniqueness” thus.

In the zoning context, the ‘unique’ aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. ‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, *subsurface condition*, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to characteristics as unusual architectural aspects and bearing or party walls. *North v. St. Mary’s County*, 99 Md. App. 502, 514, 638 A.2d 1175 (1994) (italics added).

In this case, the Property is irregularly shaped, causing Petitioner practical difficulty in complying with the required setbacks, in accordance 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 Findings of Fact support the conclusion that the garage would be located well beyond the side setback line, based on the current orientation of the dwelling. There is no evidence the

requested variance would alter the essential character of the neighborhood or district in which the lot is located or be detrimental to the public welfare, in accordance with § 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 irregular shape of the Property. The owners did not create the practical difficulties or hardships, in accordance with § 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 three-car garage is a typical size in the RR zoning district. Within the intent and purpose of the regulations, then, the variance is the minimum necessary to afford relief, in accordance with § 130.B.2.a(4).

**ORDER**

Based upon the foregoing, it is this **11<sup>th</sup> day of August 2016**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Betty Weickgenannt for a variance to reduce the 60-foot rear setback to 38 feet for a garage addition in an RR-DEO (Rural Residential: Density Exchange Option) Zoning District, is hereby **GRANTED**;

**Provided, however, that:**

1. The variance shall apply only to the garage addition as described in the petition and shown on the variance plan and not to any new structures, uses, or change in uses on the subject property or to any additions thereto.
2. Petitioner shall obtain all necessary permits.

**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 calendar 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.