

IN THE MATTER OF

**JEFF WILSON
T/A HAMMERHEAD CONTRACTING
CORPORATION**

Petitioner

: BEFORE THE
:
: HOWARD COUNTY
:
: BOARD OF APPEALS
:
: HEARING EXAMINER
:
: BA Case No. 11-015V

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DECISION AND ORDER

On July 18, 2011, 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 Jeff Wilson t/a Hammerhead Contracting Corporation for a variance to reduce the required 30-foot rear setback to 12 feet for a deck in an R-SC (Residential: Single Cluster) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to compliance with the notice and posting requirement of the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Jeff Wilson testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

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

1. Property Identification. The subject property is located on the north side of Hillrise Court about 210 feet south of Mayfield Avenue. The subject property is officially identified as Tax Map 37, Grid 15, Parcel 623, Lot 37 and the address is 8010 Hillrise Court (the Property).

2. Property Description. According to the variance plan and petition, the .234-acre Property has five property lines. The east front lot line has a gentle curve and appears to be about 90 feet in length. The length of the south lot line is unknown. There appears to be two westerly rear lot lines.¹ The shorter lot line is about 36 feet in length, and the longer lot line, about 92 feet. The northern lot line is about 79 feet in length.

The Property is improved by a single-family detached dwelling and attached garage fronting on Hillrise Court. To the dwelling's rear is a ground level deck and behind it, an above ground pool. A privacy fence runs along the shorter rear property line.

1. Adjacent Properties. The R-SC adjacent properties are improved with single-family detached dwellings.

2. The Variance Request. The Petitioner is proposing to construct a 10-foot by 25-foot deck about 3.5 to 4.0 feet in height next to the existing deck to provide access to the pool. Because the deck would encroach into the 30-foot rear setback imposed by Zoning Regulations Section 110.D.4.d.(1)(c) to reduce the setback to 12 feet.

3. Mr. Wilson testified that the adjoining property is open or common space.

CONCLUSIONS OF LAW

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

¹ The Hearing Examiner uses the term "rear" property lot line descriptively. The rear setback appears to be taken from the 92-foot property line.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.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.

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). 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 has an irregular, 5-sided shape and this causes the building envelope to be irregular in shape, including an unbuildable triangular section near the smaller rear lot line. Consequently, I conclude the Property's shape is a unique physical condition

causing the Petitioner practical difficulty in complying with the setback requirements, in accordance with Section 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 deck will be used for a permitted purpose and is a reasonable size. Additionally, as a condition of approval, the Hearing Examiner is requiring the Petitioner to install a privacy fence along the 92-foot property line to deter encroachment into the adjoining property. As conditioned, the variance, 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 Section 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 shape of the lot and was not created by the Petitioner, in accordance with Section 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 deck is a reasonable size. Within the intent and purpose of the regulations, then, the variance is the minimum necessary to afford relief, in accordance with Section 130.B.2.a.(4).

ORDER

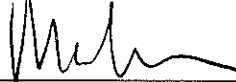
Based upon the foregoing, it is this 21st Day of July 2011, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the variance petition of Jeff Wilson t/a Hammerhead Contracting Corporation to reduce the required 30-foot rear setback to 12 feet for a deck in an R-SC (Residential: Single Cluster) Zoning District, is **GRANTED**;

Provided, however, that:

1. The Petitioner shall install a privacy fence along the 92-foot lot line.
2. The variance shall apply only to the uses and structures as described in the petition submitted and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: _____

7/21/11

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.