

IN THE MATTER OF	:	BEFORE THE
<b>Robert and Kimberly</b>	:	HOWARD COUNTY
<b>Miller</b>	:	BOARD OF APPEALS
Petitioners	:	HEARING EXAMINER
	:	BA Case No. 21-029V

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**DECISION AND ORDER**

On March 24, 2022, 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 Robert and Kimberly Miller (Petitioners) for a variance to decrease the front yard setback for structures, on lots 3 acres in size or greater, from 75 feet to 30 feet, at Tax Map 22, Grid 07, Parcel 533, Lot 26 also identified as 13835 Kennard Drive, Glenelg, in the RR (Rural Residential) Zoning District, filed pursuant to Section 130.0.B.2 of the Howard County Zoning Regulations (the HCZR) for a variance from Section 105.0.E.4.a.(2).

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. Robert Miller (Petitioner) testified in support of the Petition. No one appeared in opposition to the Petition.

Petitioners provided the following exhibit during the hearing:

## Exhibit 1. Approved Septic Plan 3/20/95

**FINDINGS OF FACT**

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

1. Property Identification and Description. The approximately 3.72-acre property is located on the west side of Kennard Drive, northwest of its intersection with Ivory Lane and Triadelphia Road. The Subject Property lies in the 5th Election District, is identified as Tax Map 22, Grid 07, Parcel 533, Lot 26, and is known as 13835 Kennard Drive, Glenelg, Maryland (the Property).
2. Adjacent Properties. Adjacent properties are in the RR Zoning District and Lot 23 is undeveloped, with the remainder of the properties developed with single family detached dwelling units.
3. Roads. Kennard Drive is a loop road and has two travel lanes.
4. Water and Sewer Services. The Property is not within the Metropolitan District and the Planned Service Area for water and sewer.
5. The Requested Variance. The Subject Property is a flag lot, located on a pipestem with access to Kennard Drive. The Property is developed with a single family detached home and is encumbered by a Sewage Easement. The front lot line for the Property abuts Lot 21. Petitioners are requesting a variance from the 75-foot front yard setback for structures in order to construct a pole barn to be utilized as a garage and for storage.

6. Agency Comments. There are no Department or agency objections to the proposed variance.

### **CONCLUSIONS OF LAW**

The standards of variances are contained in HCZR Section 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 Section 130.0.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.**

Compliance with the 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).

The Property is a flag lot with a pipestem access to Kennard Drive. Kennard Drive is a loop road, and the Property is internal to that loop, adjoining the rear yards of Lots 22, 23, 24, 25 and 27. The Property shares a common side yard boundary with Lot 21 and is not visible from Kennard Drive. It slopes downward from the northeasterly corner to the southwesterly corner of the lot. There is a 10,000 square foot Sewerage Easement on the Property which is trapezoidal in shape. The location of the Sewerage Easement and the existing dwelling prevent the construction of the pole barn outside of the 75-foot front yard setback. Access to the side yard around the other side of the dwelling is also difficult as there is a buried propane heating tank and several mature trees which would all have to be removed and would require excessive fill. The topography in this area contains a steep slope and a large dip. The well would also have to be relocated. These unique conditions result in practical difficulties and hardships in strictly complying with the bulk regulations of the RR Zoning District.

**(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 neighbors are aware of the instant Petition and did not appear in opposition. The neighborhood is developed with single family detached dwelling with the exception of Lot 23 which is currently undeveloped. The pole barn will not be visible from Kennard

Drive. All of the properties in the neighborhood are large lots. The area proposed for the pole barn is relatively flat, will not require an excessive grade change and will not require the removal of mature trees. Its location will also allow a minimal access drive to be utilized. Lots 21 and 27 have existing pole barns.

The variance, if granted, will therefore not alter the essential character of the neighborhood in which the lots are located nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 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 difficulties and hardships in complying strictly with the bulk regulations were created many years ago when the Property, along with the existing neighborhood, was subdivided and the Property was designed as a flag lot with a pipe stem access to Kennard Drive. The curvature of Kennard Drive has created the Property with a front lot line adjoining Lot 21 and a resulting 75 foot setback in the only developable area with minimal disturbance and minimal access drive. The Petitioners purchased the Property with the existing single family detached dwelling, the Sewerage Easement, the buried propane tank, the well, the topography and the mature trees. These practical difficulties and hardships were not created by the current property owners (Petitioners), who purchased the Subject Property in 2021. This situation was not created by the Petitioners in accordance with Section 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 variance sought, to decrease the front yard structure setback, for properties 3 acres or greater in size, from 75 feet to 30 feet, for the proposed pole barn, is the minimum decrease necessary to accommodate the pole barn. Within the intent and purpose of the regulations, this variance is the minimum necessary to afford relief, in accordance with Section 130.0.B.2.a.(4).

**ORDER**

Based upon the foregoing, it is this 29th day of March, 2022, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

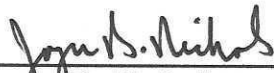
That the Petition of Robert and Kimberly Miller for a variance to reduce the front yard setback for structures, on lots 3 acres in size or greater, from 75 feet to 30 feet, at Tax Map 22, Grid 07, Parcel 533, Lot 26, identified as 13835 Kennard Drive, Glenelg, Maryland, in the RR (Rural Residential) Zoning District, be and is hereby **GRANTED;**

**Provided, however, that:**

1. The variance shall apply only to the use as described in the Petition and Variance Plan submitted and not to any other activities, uses, structures, or additions on the Property.
2. Petitioners shall obtain all necessary permits.

**HOWARD COUNTY BOARD OF APPEALS**

**HEARING EXAMINER**

  
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**Joyce B. Nichols**

**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.