

IN THE MATTER OF : BEFORE THE
Transforming Architecture : HOWARD COUNTY
Petitioner : HEARING EXAMINER
: Case No. BA 22-010V
:

DECISION AND ORDER

On June 27, 2022, the undersigned, serving as the Howard County Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Transforming Architecture, Petitioner, for a variance from Section 108.0.D.4.b.(1)(a)(ii) of the Howard County Zoning Regulations for a residential variance to reduce the required 50-foot front setback from the public right-of-way to 33.5 feet to accommodate an expansion of the existing garage and an addition of a front porch with a ramp. The home is owned by Diane and John Seibert.

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. The Petitioner appeared and testified in support. No one appeared and testified in opposition to the Petition.

FINDINGS OF FACT

A. Property. The Property is identified as Tax Map 36, Parcel 220 (the "Property") and addressed as 6420 Chell Road, Columbia, Maryland. The 19,994 square foot property is zoned R-20 (Residential: Single).

B. Vicinal Properties. All adjoining properties are zoned R-20 and contain single family residences.

C. Variance Requested. required 50-foot front setback from the public right-of-way to 33.5 feet to accommodate an expansion of the existing garage and an addition of a front porch with a ramp.

D. Documents. There were no documents admitted into the record other than the Petition and accompanying documents filed therewith.

E. Testimony.

Karen Mosel of Transforming Architecture testified and adopted the comments set forth in the Petition. In addition, she testified that the owners are retiring and wish to alter the home to ensure it is accessible. A front porch with a ramp will be installed in the front of the house and the garage will be expanded to accommodate structural changes to the slab in order to create a ramp inside the garage. A variance is needed because the garage expansion encroaches into the 50-foot setback from Chell Road. (The entire front of the existing home encroaches into the 50-foot setback and became noncomplying when the zoning regulations were changed and expanded the front setback requirement from 30 feet to 50 feet.) She testified that the neighborhood

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Zoning Regulations. That section provides that a variance may be granted “where all of the following determinations are made”:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of 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.

(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.

(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.

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

(5) That no variance be granted to the minimum criteria established in Section 131.0 for Conditional Uses except where specifically provided therein or in an historic district. Nothing herein shall be construed to prevent the granting of variances in any zoning district other than to the minimum criteria established in Section 131.0.

Based upon the foregoing Findings of Fact, and for the reasons stated below, the requested variance meets the criteria necessary for the granting of a variance and therefore shall be granted.

1. Section 130.B.2.a (1)

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. Second, 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).

The Property is unusual or different from the nature of other properties in the area. While several of the properties in the neighborhood are narrow, this property is not only narrow but the house is closer to the front lot line than other properties in the neighborhood. This unique condition disproportionately impacts the property because there is less room for any additional structural changes between the house and the front lot line and any change to the front of the house that adds to the front edge of the structure would require a variance. Also, unlike other homes in the area, there is not sufficient room on either side of the house to add to the structure without a side setback variance. Placing the garage extension at the rear of the home so that it does not encroach into either the side or front setback would result in both practical difficulties and unnecessary hardships. If the garage were expanded into the rear yard area, such a location would significantly impact and reduce the backyard area.

The criteria set forth in Section 130.B.2.a (1) are met.

2. Section 130.B.2.a (2)

I find 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. It will be

consistent with other houses in the neighborhood which have been expanded similarly. The design will implement similar design concepts as the house next door which will enhance the home's curb appeal and the design of the front porch conceals the ramp providing an attractive way to create both a safe access and livability.

Petitioner therefore meets the criteria of Section 130.B.2.a (2) of the Zoning Regulations.

3. Section 130.B.2.a (3)

The hardships and practical difficulties were not self-created. The front setback was 30 feet when the home was built and was increased to 50 feet later.

The Petitioner has met the criteria of Section 130.B.2.a(3).

4. Section 130.B.2.a (4)

The requested variances are the minimum variance necessary to afford relief. Any change to the front of the house that adds to the front edge of the structure would require a variance. Also, there is not sufficient room on either side of the house to add to the structure without a side setback variance.

Within the intent and purpose of the regulations, then, the requested variance is the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

5. Section 130.B.2.a(5) [Not applicable to this Petition.]

ORDER

Based upon the foregoing, it is this 27th **day of July 2022**, by the Howard County Hearing Examiner:

ORDERED, that the request for a variance from Section 108.0.D.4.b.(1)(a)(ii) of the Howard County Zoning Regulations for a residential variance to reduce the required 50-foot front

setback from the public right-of-way to 33.5 feet to accommodate an expansion of the existing garage and an addition of a front porch with a ramp in accordance with the Revised Site Plan dated April 20, 2022 shall be and hereby is **GRANTED**.

HOWARD COUNTY HEARING EXAMINER

Katherine L. Taylor

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.