

IN THE MATTER OF	:	BEFORE THE
GREENLEAF BUILDERS, LLC	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 16-031V

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DECISION AND ORDER

On December 5, 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 Greenleaf Builders, LLC (Petitioner) for a variance to reduce the 75-foot front setback to 25.1 feet for a principal structure (dwelling) in an RR-DEO (Rural Residential: Density Exchange Option) zoning district, filed pursuant to § 130.0.B.2.a of the Howard County Zoning Regulations (HCZR).

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. Thomas Meachum, Esq., represented the Petitioner. Peter Andrulis and Stephen Forney testified in support of the petition. Andrew Atwell submitted a timely letter noting his opposition to the variance petition. No one appeared in opposition to the petition.

Petitioner introduced into evidence the exhibits as follows.

1. Resume, Peter, Andrulis

FINDINGS OF FACT

Based upon the petition and variance plan and the evidence presented at the hearing, the

Hearing Examiner finds as follows:

1. Property Identification. The subject property is located on the south side of Lime Kiln Road about 110 feet west of Hunterbrooke Lane. It is identified as Tax Map 0046, Grid 0001, Parcel 182, is located in the 5th Election District, and is known as 11855 Lime Kiln Road (the Property).

2. Property Description. The irregularly shaped, 0.254-acre Property is about 60 feet wide. The eastern lot line is about 202 feet deep and the western lot line is about 186 feet deep. It is improved with a small dwelling located about 33 feet from the paving edge of Lime Kiln Road. A driveway along the western lot and apparently located on a portion of adjoining Parcel 183, provides access.

3. Vicinal Properties. Across Lime Kiln Road to the north is a motor vehicle fueling facility and convenience store enlarged through Board of Appeals Case No. 06-010C, and a small commercial building. The adjoining properties are zoned RR-DEO. Parcel 225 to the east is improved with a single-family detached dwelling, which is also noncomplying to the 75-foot setback from Lime Kiln Road. Parcel 201 to the south is improved with a single-family detached dwelling fronting on Hunterbrooke Lane. Parcel 183 is improved with a single-family detached dwelling that apparently has not been used as a residence for some time. This dwelling is also apparently noncomplying to the 75-foot setback from Lime Kiln Road.

4. The Variance Request. Petitioner is requesting a variance from the 75-foot front setback imposed by HCZR § 105.0.E.4.a.(2) to 25.1 feet for a single-family detached dwelling.

5. Agency Comments. By county law, the Department of Planning and Zoning (DPZ) does not issue a technical staff report or make recommendations for variance petitions on residentially

zoned property. On November 30, 2016, the Health Department's Bureau of Environmental Heath issued this clarified comment on the requested variance. "The Health Department does not object to any variance to a Building Restriction Line. The houses as shown on the variance request plans (sic) may need to be revised to accommodate well or sewage disposal locations prior to Health approval of any permit." This clarified comment and the original comment are posted on the Howard County calendar, <http://cc.howardcountymd.gov/Calendar>, for December 5, 2016.

6. Peter Andrulis testified to being a landscape architect with Sill Engineering. He testified to the Property being a smaller lot, with an older house currently located about 33 feet from the paving edge of Lime Kiln Road. The proposed dwelling is depicted on the Variance Plan and would be located about 39 feet from the paving edge. The size of the Property and the location of wells and septic pushes the building envelope toward the front of the Property. The Property was created before county zoning regulations. Owing to the current 75-foot setback, which runs near the middle of the Property, a variance is necessary for any new dwelling. Additionally, the dwelling must be located a certain distance from the septic tank. The Variance Plan depicts the septic tank as being located about 21 feet away. To the south of the septic tank is an existing septic trench, which runs from the tank toward the rear of the Property. Mr. Andrulis further testified to the current right-of-way having been established as a 30-foot prescriptive easement.

7. The Hearing Examiner questioned Mr. Andrulis about the required distance between the proposed dwelling and the septic tank, which he stated is 20 feet. When asked if the well can be

located within the ROW, which it is, he replied that that is an interesting question, and it would depend on whether the county would allow it.

8. Stephen Forney testified to being in the homebuilding business since 1974 and had his own company until 2012. Based on his experience, most houses are larger than proposed for the Property. The Property was perced based on county requirements and passed. It has a current septic system in place and a new system compliant with county law would be installed. A new well in compliance with county law was drilled.

CONCLUSIONS OF LAW

I. A Background Issue

An important background issue in this case is whether the proposed location of the dwelling will comport with county well and septic setbacks and related requirements. However, as the Hearing Examiner explained during the hearing, a Hearing Examiner may not deny a variance petition based on advisory agency comments. The Hearing Examiner's authority in a variance petition hearing is limited to the petition's compliance with the four standards set forth in HCZR § 130.0.B.2.a, which gauge the impact of the requested relief from certain bulk regulation, dimensional standards in the applicable zoning district, such as setbacks, lot coverage and building height. Well and septic issues are addressed subsequent to any granting of a variance petition. Consequently, should the Health Department discover during building permit application review that the location or size of the proposed dwelling does not comport with county law, Petitioner shall be required to submit a new variance petition. Hence this approval condition: "The Petitioner shall comply with all county laws and regulations."

II. Variance Standards

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 variance complies 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 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).

The Property, created before county zoning regulations (1948), is noncomplying to the HCZR. HCZR § 105.0.E.3.(b) imposes a 100-foot minimum lot width. The 75-foot setback particularly renders the Property unbuildable without a variance. Owing to these bulk regulations, a variance would be needed for any dwelling. The new dwelling would be more

conforming to the HCZR, as it would be set back six feet further than the existing dwelling. A practical difficulty arises in complying strictly with the setback regulation, in accordance with HCZR § 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.

Adjoining Parcel 225 to the east is improved with a single-family detached dwelling that is also noncomplying to the 75-foot setback from Lime Kiln Road. There is no evidence that the granting of the 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 § 130.0.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 difficulty in complying strictly with the setback regulation arises from the noncompliant size of the Property, and the impact of the 75-foot setback on the building envelope, in accordance with § 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 requested reduced setback is for a reasonably sized dwelling, in accordance with § 130.0.B.2.a(4).

ORDER

Based upon the foregoing, it is this **9th day of January 2017**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

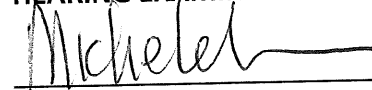
That the Petition of Greenleaf Builders, LLC for a variance to reduce the 75-foot front setback up to 25.1 feet for a principal structure (dwelling) in an RR-DEO (Rural Residential: Density Exchange Option) zoning district, is hereby **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the dwelling 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 comply with all county laws and regulations.
3. Petitioner shall obtain all required permits.
4. This approval of the requested variance is subject to HCZR § 130.0.B.2.e, Lapse of Variances:
(1) Except as provided in Subsection e.(2), below, a variance shall become void unless the required permits conforming to plans for which the variance was granted are obtained within two years, and substantial construction in accordance therewith is completed within three years from the date of the Decision and Order.
(2) Subsection e.(1) above, shall not apply to any project for which plans are being actively processed in compliance with the procedures in Title 16, Subtitles I and II of the Howard County Code or where being actively processed in compliance with those subtitles when the applicable time period established by Subsection 1 above, expired.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER



Michele L. LeFaivre

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.

Request for Reconsideration: Hearing Examiner Rule 11.1.

11.1 Any party to a case may request that the hearing examiner reconsider the decision in the case.

11.2. Procedure. A request for reconsideration must be made in writing* and submitted within 15 days after the issuance of the decision. The request must state the reasons for the request, and may include a request for a hearing and a request to suspend the decision. The party making the request must send a copy of the request to each party and certify that a copy has been sent to each party.

11.3. Response. Any party may file a written response to the request for reconsideration within 10 days of the filing of the request.

11.4. Hearing. At the discretion of the hearing examiner, a hearing may be held on the request for reconsideration. The hearing examiner will not consider new or additional evidence unless the evidence could not reasonably have been presented at the original hearing.

11.5. Standard for Reconsideration. The hearing examiner will revise the decision only upon a finding of mistake of fact or mistake of law.

11.6. Decision. The hearing examiner will issue a written decision on the request for reconsideration. If the hearing examiner decides to deny the request, the hearing examiner need not wait to receive responses to issue the decision. The hearing examiner may reverse the original decision, modify it, or impose additional conditions. The clerk will mail a copy of the reconsideration decision to each party of record.

1.7. Time for Appeal. The filing of a request for reconsideration does not suspend the time for filing an appeal to the Board of Appeals unless the hearing examiner has suspended the decision. Once an appeal to the Board has been taken, the hearing examiner no longer retains jurisdiction to reconsider or suspend a decision.

*All requests for reconsideration must be in writing. No requests through emails are permitted.