

IN THE MATTER OF	:	BEFORE THE
JOHN COCHRAN	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	BA Case No. 19-020V

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DECISION AND ORDER

The Howard County Board of Appeals convened on October 18, 2019 to hear and deliberate the petition of the John Cochran (Petitioner), for a variance to reduce the required 50 foot setback from a collector street right-of-way to 14 feet for an existing shed in a R-20 (Residential: Single) zoning district, filed pursuant to §130.0.B.2 of the Howard County Zoning Regulations (HCZR).

Board members James Howard, John Lederer and Steven Hunt were present at the hearing and Chairman Howard presided. The Board members indicated that they had viewed the property as required by the zoning regulations. The Petitioner certified to compliance with the notice, posting and advertising requirements of the Howard County Code. Barry M. Sanders, Assistant County Solicitor, served as legal advisor to the Board.

The case was conducted in accordance with Section 2.209 of the Board's Rules of Procedure. The following items were incorporated into the record by reference:

1. The Howard County Code;
2. The Howard County Charter;
3. The Howard County Zoning Regulations;
4. The October 3, 2019 Department of Planning and Zoning Technical Staff Report ("DPZ") and reviewing agencies comments;

5. DPZ aerial photograph of the vicinity;
6. The General Plan for Howard County;
7. The General Plan of Highways; and
8. The Residential District Variance Petition submitted by John Cochran

John Cochran testified in support of the petition. Brian Brown testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, the Board makes the following Findings of Fact:

1. The subject property is identified as Tax Map 31, Grid 22, Parcel 367, Lot 10. The address of the subject property is 5501 Montgomery Road, Ellicott City, Maryland 21043 (the "Property").
2. The 0.513-acre Property is in the R-20 (Residential: Single) zoning district.
3. The Property is improved with a single-family detached dwelling with deck and garage. The Property has a pool with patio in the rear yard and a patio in the front yard.
4. The Petitioner requests a variance from Section 108.0.D.4.a.(1)(a)(ii) of the Zoning Regulations to reduce the required 50-foot setback from a collector street right-of-way to 14 feet for an existing shed.
5. All adjoining and vicinal properties are similarly zoned R-20 and contain single-family detached dwellings on lots that appear similar in size and shape.
6. John Cochran testified and stated that he needs a variance for the existing shed located on the north side of his Property 14 feet from Kerger Road. Mr. Cochran put this shed on his Property without the requisite County permit. Mr. Cochran said that his property is

unique because his property is square in shape with a small back yard while the surrounding properties are rectangular with larger backyards. Mr. Cochran said that his Property differs from surrounding properties in that they have 10-foot side setbacks and 50-foot front setbacks while his corner lot has two 50-foot front setbacks and 10- foot side setbacks. Mr. Cochran also stated that his Property slopes in the rear yard. Mr. Cochran said that surrounding properties have backyard space for both a pool and shed and that he does not. Mr. Cochran stated that the shed was placed in the logical position in his yard and is not visible to neighbors. In response to questioning, Mr. Cochran admitted that he previously had another shed in his backyard but removed it when he built his pool. Mr. Cochran said that the current shed was to store personal items, however, he acknowledged that he may put equipment for his business temporarily in the shed.

7. Brian Brown, nearby resident, testified in opposition to the variance request and stated that Mr. Cochran is utilizing the shed as an integral part of his landscaping business that he runs from his Property. Mr. Brown said that the shed is part of the business and Mr. Cochran is not being honest with the Board regarding the running of his business out of the shed and the reason he put his shed in its current position. Mr. Brown said that he is especially concerned about the loading and unloading of the truck and the stopping of traffic so close to the intersection of Kerger and Montgomery Roads. Mr. Brown also was concerned about the Leyland Cypress trees and shed location, making left hand turns onto Montgomery Road difficult for his wife when she goes to work. Lastly, Mr. Brown said that Mr. Cochran should have put the shed in his backyard and that the variance request does not comply with the variance criteria.

CONCLUSIONS OF LAW

The Board'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 regulations and dimensional standards in the applicable zoning district such as setbacks, lot coverage and building height. Pursuant to HCZR §130.0.B.2.a., the Board may grant a variance only if the Petitioner demonstrates compliance with all four variance criteria.

(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.

(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 necessary to afford relief.

For the reasons stated below, the Board finds that the requested variance does not comply with Section 130.0.B.2.a(1) and therefore must be denied.

2. 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.(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).

With respect to the first prong of the variance test, the Maryland courts have defined “uniqueness” thusly:

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 Petitioner has not shown that the Property is in any way unique such that the use setback of Section 108.0.D.4.a.(1)(a)(ii) will disproportionately impact it. The Board finds that the square shape and the existing setback requirements are not unique physical characteristics of the Property. As stated in *North*, “uniqueness” does not refer to the extent of improvements upon the property. In this case the buildable/useable area on the Property is constrained by the improvements upon the Property and not by the lot being square in shape or the Property having required setbacks. The Board also finds that the slope in the backyard yard is not unique when the Petitioner admitted that he once had a shed in his backyard and removed it when he built his pool.

Unique physical characteristics of the property, not the desires of, or conditions personal to the applicant, must prevent the applicant from developing in compliance with the zoning ordinance. Moreover, the Property is not constrained by steep slopes, wetlands, parcel shape or other environmental factors that limits the reasonable use of the Property. Lastly, the mere existence of the setbacks from public street right-of-ways is not sufficient reason to grant a variance from it. If this were the case, every R-20 zoned property that adjoins collector street right-of-ways would warrant a variance – effectively emasculating the setback requirement itself.

Unless there is a finding that the property is unique, unusual, or different, the process stops here, and the variance is denied without any consideration of practical difficulty or unreasonable hardship. *Cromwell*, 102 MD. App. At 694-695, 651 A.2d at 426. In this case, the Petitioner has not produced sufficient evidence to pass the first prong of the variance test; that is, it has not shown that the Property has unusual or unique characteristics that cause the use setback restriction to disproportionately impact upon it. For this reason, the variance request fails to comply with Section 130.B.2.a(1).

ORDER


Based upon the foregoing, it is this 31ST day of December, 2019, by the Howard County Board of Appeals, **ORDERED:**

That the petition of the John Cochran (Petitioner), for a variance to reduce the required 50-foot setback from a collector street right-of-way to 14-feet for an existing shed in a R-20 (Residential: Single) zoning district is hereby **DENIED**.

ATTEST:



Robin Regner, Secretary

HOWARD COUNTY BOARD OF APPEALS


James Howard
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James Howard, Chairperson

Did Not Participate
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