

IN THE MATTER OF	:	BEFORE THE
GORDON CWYNAR	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 19-028V

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DECISION AND ORDER

On January 28, 2020, 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 Gordon Cwynar (Petitioner) for a variance to reduce the 10-foot side setback to 5 feet in order to accommodate a deck for a detached dwelling in a R-20 (Residential: Single) Zoning District, filed pursuant to Section 130.0.B.2 of the Howard County Zoning Regulations (the HCZR). As a result of error, there was no audio recording of that hearing and the request was heard again on February 20, 2020 in accordance with all regulations.

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

FINDINGS OF FACT

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

1. **Property Identification and Description.** The approximately 0.321 acre property is located in the southwest corner of the intersection of Chews Vineyard and Worthington Manor Way. The subject property lies in the 1st Election District, is identified as Tax Map 0031, Grid 0003, Parcel 810, Lot 89 and is known as 4500 Worthington Manor Way, in the Worthington

Reserves subdivision (the Property). Lot 89 is approximately 159 feet wide and 90 feet deep. Constructed in 1998, the single-family detached dwelling on this corner lot faces Worthington Manor Way with large yards on each side of the house and a very narrow (approximately 19 feet) side yard located to the rear of the dwelling.

2. Adjacent Properties. Adjacent properties are also zoned R-20 and improved with single-family detached dwellings.

3. The Requested Variance. The Petitioner is proposing to construct a 24-foot-wide and 14-foot-deep wooden deck attached to the rear of the existing single-family dwelling, at a height of 3 feet, on the Property. The deck would sit approximately 5 feet from the rear property line. The proposed deck will only be visible from the adjacent neighbor on Chews Vineyard and will not be visible from Chews Vineyard, Worthington Manor Way, or the adjacent property on Worthington Manor Way due to the topography and landscaping. Because the 14-foot wide deck would encroach 5 feet into the side setback imposed by HCZR Section 108.0.D.4.c(1)(b), Petitioner is seeking a variance to reduce the setback to 5 feet. The Petition states the 5-foot setback is the minimum necessary to permit the construction of a 14-foot wide deck on the rear of the home, as the required 10-foot setback would render the deck so narrow as to be unusable.

4. During your Examiners site visit it appeared that if the subject dwelling had been constructed facing Chews Vineyard, the depth of the rear yard would have amply accommodated a deck; it is the construction of the dwelling on this corner lot facing Worthington Manor Way which has created a 19 foot yard located to the rear of the dwelling.

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 variance complies 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).

In this case, the narrow, 19-foot side yard located to the rear of the dwelling, being a corner lot, and the 10-foot side setback would render the yard undevelopable for a deck. Consequently, the orientation of the dwelling on a corner lot has created a yard that is narrow, shallow and irregular from the lots in the neighborhood, which are unique physical conditions 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. As the evidence shows, and as the Hearing Examiner observed, the neighborhood consists of generally regular rectangular lots with dwellings oriented towards the street frontage creating reasonably sized rear yards. It is the orientation of the subject corner lot to Worthington Manor Way in lieu of Chews Vineyard that creates a narrow yard behind the dwelling which is uniquely shallow. 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 130.0.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 Property's shape and size, and being a corner lot with the dwelling oriented to Worthington Manor Way, and was not created by the Petitioner, 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 proposed deck is a reasonable size necessary to accommodate family occupancy, including table and chairs, and direct access into the dwelling via existing french/sliding doors. Within the intent and purpose of the regulations, then, the 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 21st day of February 2020, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

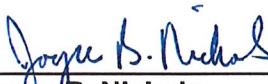
That the Petition of Gordon Cwynar for a variance to reduce the 10-foot side setback to 5 feet for a proposed deck attached to a single-family detached dwelling in an R-20 (Residential: Single Family) Zoning District, is hereby **GRANTED;**

Provided, however, that:

1. The variance shall apply only to the deck as described in the petition and plan submitted and not to any other activities, uses, structures, or additions on the Property.
2. Petitioner shall obtain all necessary permits.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER



Joyce B. Nichols

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.