

IN THE MATTER OF : BEFORE THE
DAVID STRATMANN : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 09-033V

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DECISION AND ORDER

On December 10, 2009, 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 David Stratmann for variances to reduce the required 10-foot rear setback for accessory structures to zero ("0") feet for an existing accessory building and a stairway/landing to the second story in an RR-DEO (Rural Residential: Density Exchange Option) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to compliance with the advertising, posting, and certification requirements of the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. David Stratmann testified on his own behalf. testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property is situated on the north side of Triadelphia Road about 410 feet northeast of Folly Quarter Road and is also known as 13364 Triadelphia Road (the "Property"). The Property is located in the 3rd Election District and is identified on Tax Map 22, Block 9, as Parcel 435, Lot 12-A.

2. The 3.99-acre generally square Property is improved by a two and one-half-story single-family dwelling sited in the middle section of the Property and fronting on Triadelphia Road. Access to the dwelling is obtained by a concrete and tar chip drive located about mid-center along Triadelphia Road. The driveway runs past the west side of the dwelling and ends deep into the site's rear yard. The property's expansive lawn is dotted with landscaping and trees. Shed and frame

3. Sited along the northern, rear lot line is a two-story gambrel roofed, accessory barn building. According to the petition, the accessory building is half on the Petitioner's Property and half on 13366 Triadelphia Road, and it is owned by the Petitioner. The accessory building has been substantially renovated when compared to the photographs submitted with the petition.

4. Vicinal Properties. All adjoining properties are zoned RR-DEO. To the north are Lots 12B and 12C, each of which is improved with a single-family detached dwelling. Access to these properties is gained by a 20-foot easement adjoining or running along the Property's western edge. Upon turning east at Lot 12-B, the driveway runs along this lot's common lot line with the Property, then curves to the north and east of the barn and easement access area to end at Lot 12B. To the east and south, across Triadelphia Road are several properties, each of which is improved by a single-family detached dwelling.

To the west are two residential properties, each of which is improved by a single-family detached dwelling fronting on Hunt Ridge.

5. The Proposal. The Petitioner is requesting a variance from the 10-foot rear setback for accessory structures for a relatively new wooden exterior stairway and landing area, which will provide access to the structure's second floor. The stairway is located on the north side of the barn. The petition states the second floor will be used only for storage.

6. Attached to the petition is an affidavit from the owners of 13366 Triadelphia Road stating they have granted permission to the Petitioner to construct a set of stairs to a 10-foot by ten-foot landing to access the barn owned by the Petitioner. The affidavit also states the Petitioner has a deeded 20-foot easement surrounding the barn.

7. In response to questioning, the Petitioner testified to having replaced the old wood, doors and windows and painting the accessory structure. In response to further questioning, he stated the renovations to the accessory structure involved no plumbing and that was no kitchen or bathroom on the second floor. He further stated it would not be rented out for residential use.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. Pursuant to this section, I 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, I find the requested variance complies with Section 130.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 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).

Ordinarily, existing structures may not be considered "unique" features of a property. In this case, however, a portion of the accessory structure and the entirety of the stairway encroach into the required 10-foot setback area. As such, the accessory building is a noncomplying structure and therefore constitutes a unique physical condition. Consequently, I find that the location of the accessory structure and stairway are unique physical conditions causing the Petitioner practical difficulties in complying with the setback requirement, 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 long-standing accessory structure is part of the essential character of the neighbor and the addition of a stairway to the second floor, which will be use for storage only, will not substantially impair the appropriate use of adjacent property, subject to the condition that there be no residential use of the accessory structure and no plumbing installed on the second floor.

(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 Petitioners did not create the practical difficulties in complying strictly with the setback regulations, in accordance with Section 130.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 petition states the encroachment is intended to maintain the line of the back of the house. The variance is therefore the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this **5th Day of January 2010**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of David Stratmann for variances to reduce the 10-foot rear setback to Zero ("O") feet for an existing accessory structure and a stairway/landing to access the second floor in an RR-DEO (Rural Residential: Density Exchange Option) Zoning District are **GRANTED**;

Provided, however, that:

1. The variances shall apply only to the uses and structures as described in the petition submitted and not to any other activities, uses, structures or additions on the Property.
2. The second floor of the accessory structure shall be used only for storage only.
3. No plumbing shall be installed on the second floor of the accessory structure.
4. There shall be no residential use of the accessory structure.
5. The Petitioners shall obtain all necessary permits.

**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.