

IN THE MATTER OF	:	BEFORE THE
	:	HOWARD COUNTY
TERRY & SHARON CUSTER	:	BOARD OF APPEALS
	:	HEARING EXAMINER
Petitioners	:	BA Case No. 13-002V

:.....:
DECISION AND ORDER

On April 8, 2013, 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 Terry and Sharon Custer for a variance to reduce the 30-foot rear setback feet to 16 feet for a deck, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the Zoning Regulations).

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

The Petitioners were not represented by counsel. Terry Custer testified on his own behalf. No one testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, the Hearing Examiner finds as follows:

1. Property Identification. The subject property is located on the cul de sac of Worthington Manor Way. It is identified as Tax Map 31, Grid 3, Lot 30 and is also known as 4529 Worthington Manor Way (the Property).
2. Property Description. The R-20 (Residential: Single Family) zoned Property is an

irregularly shaped, 14,200-sq. ft. lot with about 23 frontage feet, two side lot lines of irregular length and an approximately 150-foot rear lot line. It is improved with a single-family detached dwelling located toward the rear of the Property. A rear corner of this dwelling appears to be located on the 30-foot rear lot line, according to the Variance Plan. Access is provided from a driveway in the central portion of the front lot line.

3. Vicinal Properties. Adjacent properties are also zoned R-20 and are each improved with a single-family detached dwelling. The southern adjoining lot is an Open Space Parcel.

4. Variance Request. The Petitioner, the Property owner, requests a variance from Section 108.D.4.C.(1) of the Zoning Regulations to construct a 20'x12' deck to the rear of the dwelling 16 feet from rear setback instead of the required 30 feet.

CONCLUSIONS OF LAW

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

- (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.

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.

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. 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 irregularly shaped Property is a unique physical condition causing practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a.(1). The deck will be used for a permitted purpose and will not change the nature or intensity of use. 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.B.2.a.(2).

The practical difficulty in complying strictly with the setback regulation arises from the shape of the lot and was not created by the Petitioner, in accordance with Section 130.B.2.a.(3).

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

ORDER

Based upon the foregoing, it is this **18th day of April 2013**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Terry and Sharon Custer for a variance to reduce the 30-foot rear setback feet to sixteen feet for a deck in the R-20 Zoning District is **GRANTED**.

Provided, however, that:

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

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFavre

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.