

IN THE MATTER OF : BEFORE THE  
JACK AND DIANE PARZOW : HOWARD COUNTY  
Petitioners : BOARD OF APPEALS  
: HEARING EXAMINER  
: BA Case No. 16-005V

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**DECISION AND ORDER**

On September 22, 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 Jack and Diane Parzow (Petitioners) for six retroactive variances in an R-20 (Residential: Single) zoning district:

- 1) Reduce the 50' front structure and use setback from a public street right-of-way to 22.5' for a front porch.
- 2) Reduce the 50' front structure and use setback from a public street right-of-way to -0.85' for an existing garbage container shed.
- 3) Reduce the 10' side structure and use setback to 0' for a deck.
- 4) Reduce the 10' rear accessory structure setback to 6.7' for an existing accessory structure.
- 5) Increase the maximum cumulative lot coverage permitted for accessory structures on a residential lot from 600 square feet to 1,153 square feet to accommodate an existing accessory structure & garbage container shed.
- 6) (Per the amended plan), reduce the 10-foot rear setback to 0.0 feet for an existing deck.

The petition was filed pursuant to § 130.0.B.2 of the Howard County Zoning Regulations (the HCZR). The Petitioners 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 Coale, Esq., represented the Petitioners. Jack Parzow testified in support of the petition. Robert Houston testified in opposition to the

petition.

### **Preliminary Matters**

At the outset of the proceeding, Petitioners introduced into evidence an amended variance petition/plan for a sixth variance, a reduction in the 10-foot rear setback to 0.0 feet for a deck (the September 22, 2016 Amended Variance Plan). The Hearing Examiner determined the hearing could proceed because the amendment was not substantial pursuant to Hearing Examiner Rules of Procedure 9.4 and 9.5.<sup>1</sup>

The Hearing Examiner takes notice of Mr. Coale's opening statement, wherein he described the history of the subject property and its earlier subdivision into Parcels 73 and 278, as well as the fact that all six variance requests arise from a county code enforcement action, wherein the Department of Planning and Zoning issued Petitioners notices of zoning violations in 2015 for alleged violations of the HCZR. The requested variances are intended to bring the subject property into compliance with the HCZR.

This variance petition is a "companion" to Board of Appeals Case No. 16-015V (also decided October 27, 2016), which application was submitted by the Parzow's neighbors and adjoining property owners, the Houstons, to cure a notice of zoning violation after the Parzows

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<sup>1</sup> 9.4. Amendments to Petition. If a petitioner proposes to amend a petition during the course of the proceedings, the petitioner must submit the amendment as an exhibit.

9.5. Substantive Amendments. If the hearing examiner determines that an amendment to a petition is substantive, i.e., the amendment proposes a use that is likely to adversely impact vicinal properties, then the hearing examiner will suspend the hearing for at least three (3) weeks. At least two (2) weeks prior to the rescheduled hearing, the petitioner must send written notice of the amendment and of the date, time, and place of the next hearing to all adjoining property owners, and must file an affidavit of written notification with the clerk. In addition, the petitioner must post the property with notice of the date, time, and place of the next hearing for at least 10 days immediately before the next hearing in accordance with §2.203(b) of the Board's Rules. The hearing examiner may request that DPZ review and make recommendations on the amendment.

filed a zoning complaint about the location of the shed on the Houston property. The BA 16-015V decision and order details the property history of the two adjoining parcels.

Lastly, this decision and order uses the phrase "accessory structure" to refer to what Petitioners call a "barn," except as necessary for clarification.

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Petitioner submitted into evidence the exhibits as follows.

1. Amended Variance Plan, September 22, 2016

Opponent introduced into evidence the exhibits as follows.

- 1-4. Photographs of the prior deck

#### **FINDINGS OF FACT**

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

1. Property Identification. The subject property is located on the south side of Harding Road about 450 feet east of Old Columbia Road. It is located in the 6<sup>th</sup> Election District, identified as Tax Map 0046, Grid 0015, Parcel 73 and is known as 11401 Harding Road (the Property).

2. Property Description. A portion of the frontage of the 0.968-acre Property is encumbered with a 30-foot prescriptive right-of-way for Harding Road and a very small section of the Property lies on the north side of the road. The Property is rectangular except for an approximately 55.5-foot long section in its front eastern section which is about 20 feet wider than the rear section, as the Hearing Examiner reads the Amended Variance Plan. It is improved with a large, two-story single-family detached dwelling located in the wider front section and sitting less than 30 feet from the right-of-way (ROW) and about 12.4 feet from the eastern lot

line in common with Parcel 278, as the Hearing Examiner reads the September 22, 2016 Amended Variance Plan. The unusual shape of the Property and the location of the dwelling is the result of Petitioner's family having subdivided a larger parcel. In the southeasterly rear side of the dwelling is an above ground deck, which sits on the rear and side lot lines. There is a relatively new covered porch on the front of the dwelling that encroaches into the 50-foot front setback. On the west side of the dwelling is an accessible ramp and porch. To the general north of this ramp is a 28sf garbage receptacle shed, which also encroaches into the front setback.

An asphalt driveway on the west side of the dwelling provides access. A large section of the area of the driveway on the south side of Harding Road is paved and used as a parking area. Beyond this front parking area, the driveway runs in a southerly direction and ends in a second, wide parking area in front of an accessory structure, which encroaches into the accessory structure rear setback. The Amended Variance Plan also depicts a frame shed behind the dwelling with a note stating it is to be removed. There are two interior fenced areas behind the dwelling.

3. Adjacent Properties. Adjacent properties are also zoned R-20. The southern property is an Open Space Lot; all other properties are each improved with a single-family detached dwelling, as is Parcel 278 to the east, which is owned by opponent Robert Houston.

4. The Requested Retroactive Variances, HCZR §§ 108.0.D & 128.0.A.12 (based on the September 22, 2016 Amended Variance Plan and the petition).

1) Reduce the 50' front structure and use setback from a public street imposed by HCZR § right-of-way to 22.5' for a front porch. A 30 'foot prescriptive ROW runs across the front portion of the Property, rendering a large portion of lot unusable.

- 2) Reduce the 50' front structure and use setback from a public street right-of-way to -0.85' for a garbage container shed.
- 3) Reduce the 10' side structure and use setback to 0' for a deck. The rear and side lot line cuts in directly behind the house, a unique condition.
- 4) Reduce the 10' rear accessory structure setback to 6.7' for an accessory structure. See the justification for Variance #5.
- 5) Increase the maximum cumulative lot coverage permitted for accessory structures on a residential lot from 600 square feet to 1,153 square feet to accommodate an accessory structure & garbage container shed. The petition states Petitioners built an accessory structure around 2003 for their horses. Because the accessory structure was an agricultural use, no permit was required. A fence and hedgerow to the rear of the Property was used as a reference point. The building is no longer used for agricultural purposes. The past use and resulting error is a unique characteristic. Existing structures exceeding minimum lot coverage square footage are unique physical conditions.
- 6) A reduction in the 10-foot rear setback to 0.0 feet for a deck. See Variance request #2.

5. Agency Comments. DPZ's Division of Public Services and Zoning Administration does not submit comments on variance petitions for residentially zoned property. The Bureau of Environmental Health submitted the only comments on the petition. The Bureau's August 3, 2016 comments states the Health Department has no objection to the variance and that "the petition indicates that the property is served by public water and sewer yet the variance plan shows a well, septic tank, and sewage disposal area on the property. All existing wells and sewage disposal components remaining on the property must be properly abandoned with documentation submitted to the Health Department prior to Health approval of any building permit."

6. Diane Parzow testified to her property having been once larger, about 1 ½ acres, and comprising what is now Parcel 73 and Parcel 278 to the east. The house was centered in the lot. Her grandmother subdivided the larger lot for children around 1977 and as subdivided, it cut right along the house. She explained the need for the variances arose from a disagreement with

the Houstons unrelated to the use of the Property, which caused the Houstons to file a zoning complaint about violations at 11401 Harding Road, including structure/use infringements on the Houston Property.

7. She explained the ROW now comes almost up to the front of the dwelling. The shed in the front was built to complement the house and is intended to prevent animals from garbage-diving. There is also a front porch in the ROW, which she described as a shelter over the front steps. She does not have a garage, as do other neighbors. The deck variance would permit safe access from the rear door. An existing fence beyond the deck prevents encroachment into the adjoining property. The existing accessory structure was built as a horse barn and needed no permit. As Mrs. Parzow further testified, the eastern lot line is unique and the cut in causes practical difficulty because there is no ability to build a compliant deck. The shed noted as to be removed on the Amended Variance Plan would be attached to the dwelling.

8. The Hearing Examiner questioned Mrs. Parzow as to whether she was aware of Harding Road's status as a county scenic road and whether there are other garbage sheds along the road. She testified to being aware of the road's scenic status and the absence of other garbage sheds along the road. The accessory structure is too far to haul garbage; it is so much easier to have the cans stored in the shed. Other neighbors have garages where they store the cans. Animals get into the trash. The Hearing Examiner expressed her concern that the shed is for the owners' convenience. The Hearing Examiner also stated she had seen a county blue recycling container outside the shed. Mrs. Parzow testified this recycling container is kept on the porch and brought out to the road on pickup day.

9. The Hearing Examiner questioned Mrs. Parzow about the location of the rear door driving the location of the deck. Mrs. Parzow indicated the location of the door, which is right next to the side of the dwelling. Any deck maintenance could be done from her Property. When asked, Mr. Coale proffered that the common lot line with Parcel 278 had been surveyed, that the Amended Variance Plan is based on the boundary survey, and that the Parzows removed a deck that had been encroaching on Parcel 278.

10. The Hearing Examiner also questioned Mrs. Parzow as to whether the accessory structure had been renovated for residential use. She replied that it had not been renovated and was not used as a residence. When asked, Mrs. Parzow testified to there being only one kitchen in the single-family dwelling. As to the fenced area within the back yard, Mrs. Parzow testified to her daughter operating a licensed, permitted day care use on the Property. The Hearing Examiner explained she was asking these questions to ensure that all necessary approvals were before her, so that the Property would be in compliance and not be subject to further code enforcement action.

11. The Hearing Examiner also questioned Mrs. Parzow about the height of the accessory structure, which the Amended Variance Plan states is 24.5 feet high, noting that the maximum height for an accessory structure in the R-20 district is 15 feet. Mr. Coale proffered the Department of Planning and Zoning had indicated to him that the height was appropriate and that, if necessary, Petitioners could seek approval for the noncomplying height of the accessory structure. Mr. Coale also proffered that the existing fence along the common lot line with Parcel 278 would be reinforced and made more substantial.

12. Robert Houston testified in opposition to the petition. He is concerned the accessory structure might be turned into a residential use, having heard about this proposed use for several years. His main concern is the location of the deck, which he believes is still on his property by a few inches. The setback was reduced when the Parzows enclosed the back porch and added another foundation to the house. The distance between the house and his property is about 10 feet. The Parzows had a wrap-around porch and the door has been there since 2002. The front of the house was on the west side. There were stairs for what is now the back door accessing the deck. He introduced into evidence Opponent Exhibits 1-4. These photographs were taken between February and April of 2016. Exhibits 1 & 2 depict red flag property stake. Exhibit 3 depicts the prior deck being taken down in March and early spring. Exhibit 4 depicts the new foundation for the deck and a temporary fence. Mr. Houston wants the 10-foot setback to be maintained because a deck could be placed somewhere else. In his view, Petitioners' need for a variance was self-inflicted. On cross-examination, Mr. Houston testified that in 1998, when Petitioners applied for permits, there had been a wrap-around porch on the south side of the house. The front of the house was on the west side. There were stairs for what is now the back door accessing the deck.

### **CONCLUSIONS OF LAW**

#### **A Preliminary Matter: The Height of the Accessory Structure**

During the proceeding, the Hearing Examiner observed that the Amended Variance Plan depicts the 1,125sf accessory structure in the rear of the Property as 24.5 feet in height, in violation of HCZR § 108.0.D.1.b, which imposes a 15-foot maximum accessory structure height

limitation. Mr. Coale proffered that the Department of Planning and Zoning (DPZ) had informed him the height was appropriate and that Petitioners could seek confirmation of the nonconforming height if necessary.

DPZ's statement, however, does not, in and of itself, legitimate the height of the accessory structure. Certainly, Petitioners could have included a variance for the accessory structure's height with the petition, they could have also included the necessary variance request with the Amended Variance Plan or they could have obtained conformation of a nonconforming use approval prior to the variance petition hearing. It was due to an analogous situation that Petitioners in Board of Appeals Case No. 16-019V (Decided October 13, 2016) amended their petition to include a variance for an accessory structure addition in an R-20 district with a height of 19 feet high and a height of 19.6 feet for the existing structure, which obviated the need for approval of a second variance petition or approval of petition for conformation of a nonconforming structure. In that case, there was sufficient information in the petition and elevations on file, as well as multiple photographs of the existing structure in evidence, to have met notice requirements. In this case, the sole information is a note on the variance plan indicating the 24.5 foot height of the structure.

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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 variances for all but the

garbage container shed, and subject to all conditions of approval, comply with §§ 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 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).

Variance # 1. Reduce the 50-foot front structure and use setback from a public street right-of-way to 22.5 feet for a front porch. Petitioners claim as a unique physical condition the presence of a 30-foot prescriptive ROW across the front portion of the Property, which renders a large portion of the lot unusable, including a section of the Property on the north side of the easement. Petitioners have not proven the prescriptive ROW is a unique condition. The prescriptive right of way is for Harding Road, a county road. The former owners who subdivided the once larger property decades ago by deed were not required by county law to dedicate the ROW for any existing road, or the future Harding Road through the subdivision process. The

Hearing Examiner therefore surmises that the adjoining Parcel 278 may also be burdened by a prescriptive easement. The Hearing Examiner notes that vicinal properties appear to have been subdivided in accordance with the Subdivision and Land Development Regulations, which would have required these property owners to dedicate the necessary ROW.

What is unique about the Property is the location of the existing dwelling, which sits less than 30 feet from the ROW and which as a noncomplying structure is a unique physical condition causing Petitioners practical difficulty in complying with the 50-foot setback for the covered porch.

Variance #2. A reduction in the 50-foot front structure and use setback from a public street right-of-way to -0.85 feet for a garbage container shed. This variance is denied because the front setback applicable to the location of the shed does not create practical difficulty. The location is instead for Petitioners' convenience; they do not want to haul garbage cans stored in another location to the curb, even though they haul their recycling container stored on a porch to the curb on recycling pickup day. Variances may not be granted when the reason for the alleged practical difficulty is inconvenience. *North v. St. Mary's County*, 99 Md. App. 502, 513-515, 638 A.2d 1181. Petitioners' concerns about animals foraging in garbage is certainly not a unique condition. They could easily relocate the garbage container shed to a location that complies with the HCZR.

Variances # 3 and 6. A reduction in the 10-foot side and rear structure and use setback to 0.0 feet for a deck. The unique physical condition causing practical difficulty is the irregular shape of the Property, which "cuts in" just behind the dwelling.

Variance # 4. A reduction of the 10-foot rear accessory structure setback to 6.7 feet for an existing accessory structure. Petitioners claim the siting of what was once an agricultural horse barn and is now an accessory structure was based on the location of a rear fence and hedgerow and the fact that the barn, an agricultural use, did not require a building permit when built. Had a permit been required, Petitioners argue, the location of the accessory structure would have been picked up. In the Hearing Examiner's view, Petitioners' reliance on the absence of a building permit requirement, based on the former agricultural use of the accessory structure, is not a unique condition causing practical difficulty.

However, it is reasonable to conclude that the location of a fence, as an indicator of a property line, could be found to be, in very limited circumstances involving an existing structure, a unique physical condition, as the Hearing Examiner here concludes. Reliance on the location of this fence created practical difficulty in complying with the 10-foot accessory structure setback.

Variance #5. A request to increase the maximum cumulative lot coverage permitted for accessory structures on a residential lot from 600 square feet to 1,125 square feet (1,153sf – 28sf for the shed = 1,125sf) to accommodate an accessory structure.

During the 2013 Comprehensive Rezoning, the supplemental regulations contained in HCZR § 128 were substantially revised in pertinent part to impose a 600-foot maximum square footage lot coverage for accessory structures on residentially zoned lots developed with single-family detached dwellings located in the public water and sewer service area. Section 128.0.A.12.a.(1)(a). With the October 6, 2013 effective date of the Comprehensive Rezoning,

the 1,073sf detached accessory structure, no longer in use as an animal shelter, became lawfully nonconforming to the maximum lot coverage restriction.<sup>2</sup>

Any variance to increase the 600sf accessory structure lot coverage restriction is not easily evaluated for compliance with the unique physical condition predicate for granting variances. In this case, the task is lessened somewhat because the 1,073sf detached accessory structure is lawfully noncompliant, and thus a unique physical condition causing practical difficulty.

**(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.**

There is no evidence that the deck, front porch and accessory structure would alter the essential character of the neighborhood in which the lot is located nor substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare. Opponent and adjoining property owner Robert Houston's objection to the location of the deck is personal.

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<sup>2</sup> Additionally, the 2013 Comprehensive Rezoning added this new subsection in HCZR § 128.0.A.4.

**4. Animal Shelter Setback Requirements**

Structures used for the housing, boarding, or sheltering of animals, including but not limited to accessory residential structures, buildings, hutches, sheds, roofed structures, and prefabricated moveable animal houses, and any areas used for the storage of animal excrement, shall comply with the accessory structure setback requirement for the applicable zoning district. In addition animal shelters measuring larger than 500 square feet in size shall be located a minimum of 200 feet from any existing dwelling on a different lot and animal shelters 500 square feet or smaller shall be located a minimum 100 feet from any existing dwelling on a different lot. The following are exempted from this requirement:

- a. Shelters used for household pets.
- b. Shelters used for residential chicken keeping which comply with the requirements for such structures as provided in Section 128.0.D.
- c. Apiaries which comply with the requirements as provided in Section 128.0.N.
- d. Structures as defined in Section 103.0.

**(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 maximum lot coverage and setback regulations arises from the square footage of the existing accessory structure being noncompliant to the HCZR and the location of the dwelling when the once larger property was subdivided to create Parcels 73 and 278.

**(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.**

The size of the accessory structure is reasonable and the deck is also a reasonable size.

**ORDER**

Based upon the foregoing, it is this **27<sup>th</sup> day of October 2016**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Jack and Diane Parzow for a variance to reduce the 50-foot structure and use setback from public street right-of-way to -0.85' for a garbage container shed is **DENIED**.

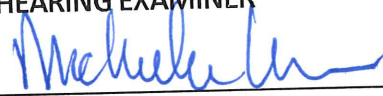
It is **FURTHER ORDERED** that their petition for variances to increase the 600-square foot maximum lot coverage to 1,125 square feet for an accessory structure, to reduce the 10-foot side and rear structure and use setback to 0.0 feet for a deck and to reduce the 10-foot rear setback to 6.7 feet for an accessory structure is hereby **GRANTED**;

**Provided, however, that:**

1. The variances shall apply only to the deck, the front porch and the rear accessory structure depicted on the September 22, 2016 Amended Variance Plan for a single-family detached dwelling with one kitchen and not to any other activities, uses, structures, or additions on the Property.
2. The plot plan and all materials submitted to the Department of Inspections, Licenses and Permits for permit approval shall accurately depict the approved variances.
3. The Plot Plan and all materials submitted to the Department of Inspections, Licenses and Permits for permit approval shall contain a note reciting all seven conditions of approval in Board of Appeals Case No. 16-005V.
4. The accessory structure shall not be used for residential purposes. No building permit shall be issued for a full bathroom, kitchen or sleeping quarters. There shall be no heavying up of electricity for residential appliances.
5. Petitioners shall obtain all necessary permits.
6. Petitioners shall comply with the Bureau of Environmental Health's comments.

7. The Department of Inspections, Licenses and Permits and the Zoning Administration Division of the Department of Planning and Zoning shall review all building permit applications pertaining to Board of Appeals Case No. 16-019V for compliance with all conditions of approval.
8. This Decision and Order does not approve an increase in the height of the accessory structure from 15 feet to 24.5 feet.

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.