

IN THE MATTER OF	:	BEFORE THE
EDWARD J. BRINKLEY	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 08-009V

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DECISION AND ORDER

On April 28, 2008, 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 Edward J. Brinkley for a variance to reduce the 30-foot rear setback to approximately 22 feet for an addition in an R-SC (Residential: Single Cluster) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Edward Brinkley and Angie Brinkley testified in support of the petition. No one 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 located in the 1st Election District on the west side of Nightwind Court about 90 feet southwest of Hillrise Court. It is identified as Tax Map 37, Grid 15 Parcel 623, Lot 39 and is also known as 8004 Nightwind Court (the "Property").

2. The 8,493-square foot (.205 acres), generally rectangular Property is part of the Mayfield Manor subdivision. Because this section of Nightwind Court has a slight curvature, the front lot line is modestly curved. The southern side lot line is about 96 feet deep, the north side lot, about 137 feet deep. The westerly rear lot line is about 107 feet wide. The Property is improved by 2-story, approximately 1,700-square foot single-family detached dwelling with a basement and front-loaded attached garage. A driveway situated about 10 feet from the southern side lot line provides access. An aboveground 30-foot wide circular swimming pool behind and to the dwelling's northwest lies 14 feet from the rear lot line and 10 feet from the side lot line. A picket fence encloses the area of the Property behind the dwelling.

3. Vicinal properties. Adjacent properties are zoned R-SC and are improved with single-family detached dwellings.

4. The Petitioner is requesting a variance to reduce the 30-foot rear setback to 22 for a 20' by 20' addition to the dwelling's rear.

5. Edward Brinkley and Angie Brinkley testified that they wanted a large addition and did not want to add onto the dwelling's side because it would be too close to the adjoining residence.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that 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 conclude the requested variance does not comply with Section 130.B.2.a.

1. 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).

2. With respect to the first prong of the variance test, the Maryland courts have defined “uniqueness” thus.

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 demonstrated that the Property is so unique as to cause the rear setback to impact it disproportionately. The Petitioners failed to provide any evidence that the Property’s shape, size, or topography is different from the lots in the immediate area. When I observed the site, it appeared to me that the Property’s size is typical of the subdivision and that there are several narrower lots in the neighborhood. This observation comports with the aerial photograph submitted by the Department of Planning and Zoning. The Petitioner offered no evidence that the Property is unique, unusual, or different in a way that would somehow result in a practical difficulty in complying with the rear setback. The Petitioners therefore fail to meet the first prong of the variance test.

The Petitioner and Ms. Brinkley testified that they are seeking the variance because they want a large family room, not a reasonably sized addition located to the dwelling’s side and close to the adjoining dwelling. However, these are personal reasons of convenience and do not warrant a variance. Thus, it cannot be said that the Petitioners are unreasonably prevented from

using the Property because they cannot build a large addition at the proposed location. The Petitioners have therefore failed to meet the criteria of Section 130.B.2.a(2).

Section 130.B.2.a(3) of the Zoning Regulations requires that the owner may not have created any practical difficulty in complying with the area and height requirements. That the Petitioners cannot construct a reasonably sized attached garage to the side of the house is in large part due to the fact that they have erected a large pool to the dwelling's side and rear. I therefore conclude that the Petitioner's erection of the pool is a self-created hardship that partly causes the Petitioner to seek the requested variance. The Petitioners have therefore failed to meet the criteria of Section 131.B.2.a(3).


As discussed above, the Petitioner has not shown that the addition could have been reduced in size to avoid the need for the setback variance. It appears from the submitted plan that the addition could be reduced in size to require a lesser setback variance. I also note that the size of the addition is substantially larger than the 12' or 15' by 12' or 15' additions proposed in the R-SC zone in relation to a setback variance. Within the intent and purpose of the regulations, then, the requested variances are not the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this 19th of May 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Edward J. Brinkley for a variance to reduce the 30-foot rear setback to approximately 22 feet for an addition in an R-SC (Residential: Single Cluster) Zoning District is **DENIED**.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: 5/21/08

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.