

IN THE MATTER OF	:	BEFORE THE
SECURITY DEVELOPMENT, LLC	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 15-045V

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DECISION AND ORDER

On February 8, 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 Security Development, LLC, for a variance to reduce the 75-foot structure (project boundary) setback to 40.9' for an existing historic house in a residential subdivision zoned R-20 (Residential: Single Family) and being developed under the R-ED (Residential: Environmental Development) Zoning Regulations, filed pursuant to § 130.0.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner 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. William Erskine, Esquire, represented the Petitioner. James Schultz testified in support of the petition. No one appeared in opposition to the petition.

Petitioner introduced into evidence the exhibits as follows.

1. Howard County aerial image showing location of historic dwelling

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 in the 1st Election District on the east terminus of Briar Oak Court about 240 feet east of Sunnyfield Court. It is identified as Tax Map 0031, Grid 0022, Parcel 628 and known as 5333 Kerger Road (the Property).

2. Property Description. The 5.18-acre Property is improved with an historic residence listed on the county Historic Sites Inventory as HO-865, the John Ridgely farm. The existing dwelling on the Property is located in the northeastern section of the Property. To the dwelling's southeast is a wagon house. The area around the dwelling is light woods, with the remainder of the Property in agricultural use (or in former agricultural use).

3. Vicinal Properties. Adjacent parcels are also zoned R-20. Lot 5 and Parcel 654 to the north are each improved with a single-family detached dwelling. Parcel 629 to the east is also improved with a single-family dwelling. Parcel 229 to the south is part of Rockburn Branch Park.

4. Historic Preservation Commission (HPC) Advisory Comments. The Property is in the process of being developed as an 11-lot subdivision. Owing to the existing dwelling's historic status, Petitioner was required to present the proposed development to the HPC for advisory comments. The petition contains a November 12, 2015 letter from S. Allan Shad, HPC Chair, to Steve Breeden, Security Development, LLC, wherein Mr. Shad conveys the HPC's support for the granting of a variance based on the design change to save and restore the dwelling, and place it on Lot #6, rather than raze it.

5. The Variance Request (§ 108.0.G.3). HCZR § 108.0.G.3 authorizes certain types of development on R-20 zoned property to proceed under R-ED zoning district regulations.

a. Land in the R-20 District may be developed pursuant to the R-ED District regulations in their entirety, if the property to be developed is:

(1) Subdivided for single-family detached units only; and

(2) A lot or group of contiguous lots with a combined total lot area of more than 100,000 square feet.

b. Land developed pursuant to this section is subject to the R-ED District regulations, including the requirement for Planning Board review, except that structures are required to be set back 75 feet from project boundaries adjoining single-family detached developments.

In this case, the proposed 11-lot residential subdivision adjoins several single-family detached developments, which subjects the historic dwelling to the 75-foot project boundary setback. Because the historic dwelling is noncomplying to all zoning regulations, having been constructed before the 1948 Zoning Regulations, Petitioner is seeking a variance to reduce the 75-foot project boundary to 40.9' on the easterly lot line.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.0.B.2.a of the Regulations. 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 comply 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.

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 130.0.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).

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 noncomplying dwelling on proposed Lot #6 dwelling has historical significance and is therefore a unique physical condition resulting in practical difficulties in complying with the 75’ project boundary setback.

(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 of the requested variance substantially impairing the appropriate use or development of adjacent property. The historic dwelling has existed in its present location for more than 100 years and the granting of the variance 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.

The Petitioner did not create the practical difficulties.

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

The proposed residential lot is a reasonable use of the Property and therefore the minimum necessary to afford relief.

ORDER

Based upon the foregoing, it is this **18th Day of February 2016**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Security Development, LLC, for a variance to reduce the 75-foot structure (project boundary) setback to 40.9 feet for an existing historic house in a residential subdivision zoned R-20 (Residential: Single Family) and being developed under the R-ED (Residential: Environmental Development) Zoning Regulations is **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the uses and structures as described in the petition as depicted on the Variance Plan and not to any other activities, uses, structures, or additions on the Property.
2. Petitioner shall obtain all required 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 calendar 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.