

IN THE MATTER OF : BEFORE THE  
RAPHAEL DELLA RATTA : HOWARD COUNTY  
Petitioner : BOARD OF APPEALS  
: HEARING EXAMINER  
: BA Case No. 14-028V

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**DECISION AND ORDER**

On November 6, 2014, 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 Raphael Della Ratta for a variance to increase the maximum lot coverage for accessory structures from 2,220sf to 4,297sf for a detached garage in an RC-DEO (Rural Conservation: Density Exchange Option) Zoning District, filed pursuant to Section 130.0.B.2 of the Howard County 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. Thomas Meachum, Esquire, represented the Petitioner. Raphael Della Ratta and Fred Dorsey testified in support of the petition. No one testified in opposition to the petition.

Petitioner introduced into evidence the exhibits as follows.

1. "Roxbury Plantation," excerpt, Celia Holland, Old Homes and Families of Howard County 2A-M. Photographs of accessory structures

**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 4<sup>th</sup> Election District on the west side of MD 97 about 300 feet west of Roxbury Road. It is identified as Tax Map 21, Grid 8, Parcel 132 and known as 3890 MD 97 (Roxbury Mill Road) (the Property).

Property Description. The 25.031-acre Property is improved with two single-family dwellings sitting deep into the northerly, rear portion of the lot. Both dwellings are accessed from a common driveway running north into the Property and then splitting into two separate drives accessing each dwelling. The westernmost "secondary" dwelling is two stories in height with an attached garage. The primary residence is an historic dwelling, the Roxbury Plantation, now known as "Villa Speranza," the historic plantation porch of which faces east. Exhibit 1. The Variance Plan depicts five accessory structures, which are visible in Exhibit 2A-M: a 625sf existing, one-story log cabin (historic building); a 435sf smokehouse (historic structure); a 580sf carport attached to the smokehouse; a 1,290sf one-story concrete block structure/garage, and a 145sf concrete block shed. The largest structure is located to the northeast of secondary dwelling and is used for property maintenance. The historic log cabin lies to the north and rear of Villa Speranza. To the Villa's southeast is the historic smokehouse, and attached to the smokehouse, the carport.

2. Vicinal Properties. All vicinal properties are also zoned RC-DEO. The residential lots of Parcel 225 to the north, the Vineyards at Cattail Creek subdivision, are unimproved and front on Sofia Court. Preservation Parcel C to the north and east is improved with farm buildings. Also to the east is Open Space Lot 26. To the south across MD 97 are Parcel 204, the site of a single-family detached dwelling, and Parcel 91, the site of the Glenwood Baptist Church. Parcel 13 to

the west is a large farm.

3. The Variance Request (§ 128.0.A.12). During the 2012 comprehensive rezoning process, effective October 6, 2013, the Zoning Regulations were amended to impose cumulative lot coverage size restrictions on residential lots developed with single-family detached dwellings. For 2±-acre lots in the RC zoning district, the maximum accessory lot coverage is now 2,200sf. Petitioner is therefore requesting a variance to increase the accessory structure lot coverage area from 2,200sf to 4,297sf so that he may replace the carport with a modern garage.

4. Petitioner introduced Exhibit 2A-M, photographs showing the accessory structures, and particularly, the smokehouse/carport structures. These photographs show the inability of the existing carport to shelter family vehicles. Mr. Della Ratta testified to the complex process by which the project architect designed the proposed garage for compatibility with the smokehouse and other historic structures on the Property. The carport would be removed and replaced with a 1,172sf garage.

5. Fred Dorsey, President of Preservation Howard County, testified in support of the variance, explaining Petitioner's desire for a design that would be compatible with the Property's historic character.

#### **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 variance complies 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. *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).

While structures are not generally considered physical conditions, in this case the small historic structures on the Property are unique architectural aspects, affecting it disproportionately. These small structures should not be altered to accommodate a modern amenity, which is why the now outdated carport was erected. The Hearing Examiner therefore concludes this physical condition is unique and results in practical difficulties in complying with the accessory structure lot coverage 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.**

There is no evidence of the requested variance substantially impairing the appropriate use or development of adjacent property and it will not be detrimental to the public welfare. Indeed, Petitioner's intent is to construct a garage that will be compatible with the historic character of this part of Howard County.

**(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, which arise from the small size of several accessory structures.

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

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

**ORDER**

Based upon the foregoing, it is this **25<sup>th</sup> Day of November 2014**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Raphael Della Ratta for a variance to increase the maximum cumulative lot coverage for accessory structures on residential lots from 2,220sf to 4,297sf for a detached garage in an RC-DEO (Rural Conservation: Density Exchange Option) Zoning District, 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.