

IN THE MATTER OF : BEFORE THE

JOHN & LEANNE BUGERT : HOWARD COUNTY

Petitioners : BOARD OF APPEALS

: HEARING EXAMINER

: BA Case No. 15-019V

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DECISION AND ORDER

On June 29, 2015, 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 John and Leanne Bugert for a variance to reduce the rear lot line setback from 25 feet to 12 feet for a deck and stairs in an R-ED (Residential: Environmental Development) Zoning District, filed pursuant to Section 130.0.B.2 of the Howard County Zoning Regulations (HCZR).

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. Petitioners were not represented by counsel. John and Leanne Bugert testified in support of the petition. No one appeared in opposition to the petition.

A Preliminary Matter – The Variance Plan

The variance plan submitted with the petition did not include the items required by the petition to be shown on the plan. Prior to the hearing, the Hearing Examiner advised Petitioners to revise the plan with this information. At the hearing, Petitioners introduced the revised plan as Exhibit 1. The plan referenced in this petition is referenced as the Revised Variance Plan (June 25, 2015).

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 side of Bending Sky Way about 100 feet north of Rushing River Drive. It is identified as Tax Map 25, Grid 14, Parcel 279, Lot 38 and known as 5026 Bending Sky Way (the Property). The Property is Lot 26 in the Autumn River Phase 2 subdivision.

2. Property Description. The Property is 6,267sf in area. The eastern side lot line is about 85' in depth, and the western lot line, about 92'. This creates an irregularly shaped lot with an angled rear property line. The dwelling fronts on and is accessed from Bending Sky Way. At its closest point to the rear lot line, the northeastern corner of the dwelling sits right on the 25' structure and use setback.

3. Vicinal Properties. All vicinal properties are zoned R-ED. Adjoining the rear of the property is an Open Space Lot 44. Although the Amended Variance Plan western property, which sits across what appears to be an access road to Lot 44 is shown as Open Space Lot 37, the Hearing Examiner observed during her site visit that it is improved with a single-family detached dwelling. The Hearing Examiner observed several rear decks in the subdivision during her site visit.

4. The Variance Request (§ 107.0.D.4.d.(1)(c)). Petitioner is requesting a variance to reduce the required 25' structure and use setback to 12' for a 10' high, raised deck and stairs (the deck). According to plans submitted with the petition, the deck and stairs would be 30' in length and 16' wide. The main portion of the deck would be 12' (w) with minor projections no

deeper than the stairs, which are proposed to be 4' in width. The deck would sit 12' from its closest point to the rear lot line. The Revised Variance Plan indicates the requested setback, but not the dimensions of the deck. For this reason, as a condition of approval, the Hearing Examiner is requiring the building permit application plan to depict the dimensions of the deck/stairs.

5. The Hearing Examiner discussed the requested setback with Petitioners, explaining her policy of requiring fencing or landscaping where a structure would encroach into a setback adjoining an Open Space Lot. The Petitioners agreed to installing an open fence near or along the rear property lot line that conforms to HCZR § 128.0.A.9.

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).

In this case, the Property is irregularly shaped, which causes practical difficulties in complying strictly with the setback regulation, in accordance with Section 130.0.B.2.a.(1).

(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.

Subject to the conditions of approval, including the fence, the variance would not alter the essential character of the neighborhood or district or substantially impair the appropriate use or development of adjacent property, in compliance with Section 130.0.B.2.a.(2).

(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 property owners did not create the practical difficulties, in compliance with Section 130.0.B.2.a.(3).

(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, an attached raised deck and stairs. It is therefore the minimum necessary to afford relief, in compliance with Section 130.0.B.2.a.(4).

ORDER

Based upon the foregoing, it is this 16th Day of July 2015, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of John and Leanne Bugert for a variance to reduce the rear lot line setback from 25 feet to 12 feet for a deck and stairs an R-ED (Residential: Environmental Development) Zoning District is **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the deck/stair uses and structures as described in the petition as depicted on the Revised Variance Plan (June 29, 2015), and not to any other activities, uses, structures, or additions on the Property.
2. The building permit application plan shall accurately depict the variance setback as 12 feet. The plan shall be scaled and shall accurately show the location of **all** setbacks, the 12' setback for the deck/stairs, and the dimensions of the deck/stairs.
3. Petitioners shall obtain all required permits.
4. Petitioners shall comply with all county laws and regulations.

**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.