

IN THE MATTER OF : BEFORE THE
KRISHNA P. JETTI : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 16-008V

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DECISION AND ORDER

On June 27, 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 Krishna P. Jetti (Petitioner) for a variance to reduce the 25-foot rear setback to 13 feet for a deck in an R-20 (Residential: Single) Zoning District developed in accordance with the R-ED (Residential Environmental Development) district regulations, filed pursuant to Section 130.0.B.2 of the Howard County Zoning Regulations (HCZR).¹

The Petitioner 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.

The Petitioner was not represented by counsel. Krishna P. Jetti testified in support of the petition. No one appeared to testify in opposition to the petition.

¹ HCZR § 108.0.G.3 Development R-20 zoned property under R-ED 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

Petitioner introduced into evidence the exhibits as follows.

1. Waverly Overlook Homeowners Association, Architectural Review Committee, Application for Architectural Modification, February 24, 2016
2. Administration Adjustment Plan, October 4, 2011

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. Property Identification. The subject property is located at the end of Waverly Overlook Court, about 275 feet south of Megan Lynn Court. It is identified as Tax Map 0010, Grid 0021, Parcel 0224, Lot 9 and is also known as 2236 Waverly Overlook Court (the Property).
2. Property Description. The 6,940sf irregularly shaped Property is improved by a single-family detached dwelling and attached garage. Owing to its location on the end of a cul-de-sac, the Property has limited frontage, which forces any dwelling deeper into the site
3. Vicinal Properties. Adjoining properties are also zoned R-20 and are each improved or being improved with a single-family detached dwelling.
4. Zoning History. AA Case No. 11-024, January 3, 2014. The Department of Planning and Zoning granted petitioner NV Homes, an administrative variance to reduce the 25-foot rear setback to 20.2 feet for a single-family detached dwelling. However, when the Petitioner purchased the Property, he opted for a different dwelling model than shown on the administrative variance plan and the dwelling as constructed met the 25-foot setback.
5. The Petition. Although the Property is zoned R-20, it was developed under the R-ED regulations, in accordance with HCZR § 108.0.G.3. HCZR § 107.0.D.4.d.(1)(c) imposes a 25-foot

structure and use rear setback. Petitioner seeks a variance from HCZR § 107.0.D.4.d.(1)(c) to reduce the 25-foot rear setback to 13 feet for a rear deck 40 feet in length and 13 feet in depth.

6. Mr. Jetti testified the proposed deck is the minimum size necessary to make reasonable use of the rear yard, a significant portion of which is encumbered by a private 20-foot wide drainage and utility easement, as shown in Petitioner Exhibit 2. Additionally, the rear yard drops in elevation and this topographical condition prevents his family from using the rear yard safely. The deck would enable his child to play outside safely.

7. Mr. Jetti introduced into evidence Exhibit 1, which is a copy of the approved Waverly Overlook Homeowners Association, Architectural Review Committee, Application for Architectural Modification for the deck. The deck would not be located within the rear easement area.

CONCLUSIONS OF LAW

The standards for variances are contained in HCZR § 130.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 variance complies with §§ 130.B.2.a(1) through (4), and therefore may be granted, as conditioned.

(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).

In this case, the Property's relatively narrow frontage is curved along the cul-de-sac and the Property is also five-sided. As a result, the buildable area for the dwelling is pushed toward the rear of the Property. The Property's frontage and shape are unique physical conditions causing Petitioner practical difficulty in complying with the 25-foot rear setback requirement, in accordance with § 130.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.

The Findings of Fact support the conclusion that the Property will be used for permitted purposes. The Petitioner is proposing to construct a deck to the rear of his home. Many homes in the neighborhood have rear decks, so a deck will not alter the essential character of the neighborhood or district in which the lot is located, nor be detrimental to the public welfare, in accordance with § 130.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 practical difficulty in complying strictly with the setback regulation arises from the Property's uniqueness and was not created by the Petitioner, in accordance with § 130.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 deck is a reasonable size. Within the intent and purpose of the regulations, then, the variance is the minimum necessary to afford relief, in accordance with § 130.B.2.a(4).

ORDER

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

That the Petition of Krishna P. Jetti for a variance to reduce the 25-foot rear setback to 13 feet for a deck in an R-20 (Residential: Single Family) Zoning District is hereby **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the deck as described in the petition and shown on the variance plan and not to any new structures, uses, or change in uses on the subject property or to any additions thereto.

2. Petitioner shall obtain all necessary permits. The permit plan shall accurately depict all HCZR setbacks, the dimensions of the deck as approved and the private 20-foot wide drainage and utility private access easement area in the rear yard.

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.