

IN THE MATTER OF : BEFORE THE  
  
**CHARLES KYLER** : HOWARD COUNTY  
  
Petitioner : BOARD OF APPEALS  
  
: HEARING EXAMINER  
  
: BA Case No. 15-040V

.....

**DECISION AND ORDER**

On February 22, 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 Charles Kyler (Petitioner) for variances to 1) increase the maximum height for an accessory structure from 15' to 23'1" for a playhouse and to 23'3" for a carriage house and 2) to increase the 600sf maximum lot coverage for accessory structures for a playhouse, carriage house and shed on property located in the R-ED (Residential: Environmental Development) zoning district, filed pursuant to § 130.0.B.2 of the Howard County Zoning Regulations (HCZR).

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.

Petitioner was not represented by counsel. Charles Kyler and Roger Michel testified in support of the petition. Charles Suter testified in opposition to the petition.

**A Preliminary Matter**

During the proceeding, Petitioner amended the Variance Plan to depict the dimensions of the three accessory structures on the subject property (the Amended Plan). Examiner Rule 9.4

requires a petitioner proposing an amendment during the course of the proceedings to submit the amendment as an exhibit. The Hearing Examiner determined the plan revision was not substantive within the meaning of Hearing Examiner Rule 9.5 and therefore could be admitted as evidence during the hearing.<sup>1</sup> The July 13, 2015 Amended Plan was introduced as Petitioner Exhibit A.

Petitioner introduced into evidence the exhibits as follows.

A. February 22, 2016 amended variance plan.

1. Photographs of property and views to/from the driveway/Sylvan Lane
2. Elevations of propose carriage house and photograph of existing red shed

Opponents introduced into evidence the exhibits as follows.

1. Photographs of pre- and post-play house construction views.  
Plan views showing setbacks of playhouse  
Height of playhouse

### **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 2<sup>nd</sup> Election District on the north side of Sylvan Lane about 735 feet northeast of the intersection with Church Road. It is identified as Tax Map 0025, Grid 0008, Parcel 242 and known as 3570 Sylvan Lane (the Property).

---

<sup>1</sup> Rule 9.4. Amendments to Petition. If a petitioner proposes to amend a petition during the course of the proceedings, the petitioner must submit the amendment as an exhibit.

Rule 9.5. Substantive Amendments. If the hearing examiner determines that an amendment to a petition is substantive, i.e., the amendment proposes a use that is likely to adversely impact vicinal properties, then the hearing examiner will suspend the hearing for at least three (3) weeks. At least two (2) weeks prior to the rescheduled hearing, the petitioner must send written notice of the amendment and of the date, time, and place of the next hearing to all adjoining property owners, and must file an affidavit of written notification with the clerk. In addition, the petitioner must post the property with notice of the date, time, and place of the next hearing for at least 10 days immediately before the next hearing in accordance with §2.203(b) of the Board's Rules. The hearing examiner may request that DPZ review and make recommendations on the amendment.

2. Property Description. The 2.62-acre Property is located in the Ellicott City Historic District. It is improved with a single-family detached dwelling. To the northeast of this dwelling is a 23'1" high, 10'x12' playhouse, which on the Amended Plan lies 11 feet from the northerly lot line. To the dwelling's south is a 16'x20' red shed. Access is provided through a curving driveway off Sylvan Lane ending in a parking pad in front of two tented structures, which function as a two-car carport. The dwelling sits on the Property's high elevation. The topography is steeply sloped beyond the area of these improvements and heavily wooded.

3. Vicinal Properties. The R-ED zoned Parcels 241 to the northwest and Parcel 19 to the southeast are each improved with a single-family detached dwelling. Across Sylvan Lane to the south, the R-20 (Residential: Single) zoned Parcels 243 and 244 are also each improved with a single-family detached dwelling.

4. Historic Preservation Commission (HPC) Comments. According to the petition supplement, the Commission retroactively approved the playhouse and proposed carriage house, noting the carriage house design as in keeping with the historic nature of the home.

5. The Variance Requests (HCZR §§ 107.0.D.1.a(2) & 128.0.A.12.a.(1)(a)). *Requested height variances*. 1) Increase the maximum height for an accessory structure from 15' to 23'1" for a playhouse. 2) Increase the maximum height for an accessory structure from 15' to 23'3" for a carriage house. *Maximum accessory structures square footage variances*. The maximum square footage for accessory structures in the RE-D zoning district is 600sf. According to the Amended Plan, the proposed carriage house is 34'x24' (816sf), the red shed is 20'x16' (320sf) and the playhouse is 10'x12' (120sf). The Amended Plan contains a note stating a 6'x4' extension on the

playhouse is to be removed, which reduces the playhouse square footage to 96sf. The total square footage of the three accessory structures is 1232sf (816sf + 320sf + 96sf). Petitioner is therefore requesting an increase in the maximum lot coverage area for accessory structures from 600sf to 1232sf. (The petition request was to increase the square footage from 600sf to 750sf, which the Hearing Examiner now understands to have meant an additional 750sf beyond the 600sf allowed as a matter of right, not a total area of 750sf.)

6. Mr. Kyler introduced Petitioner Exhibit 1, recent photographs of views to and from his property show the unobtrusiveness of the proposed carriage house. He also testified the proposed carriage house is consistent with other garage structures in the historic community. He referred to a photograph in the petition depicting a nearby carriage house with a two-story carriage house, the design of which is echoed in the proposed carriage house. The proposed carriage house would have the same footprint as the "carport." He introduced into evidence Petitioner Exhibit 2, elevation plans of the proposed carriage house.

7. Neighbor Charles Suter testified to being opposed to the playhouse because the variance plan submitted with the petition misrepresents its actual height and setback from the nearest property line. He introduced into evidence Opponent's Exhibit 1, which shows these errors. Moreover, this plan does not have certified property lines. The photographs in Opponent's Exhibit 1 are intended to depict the visual intrusiveness of the playhouse from his property.

8. Neighbor Roger Michel testified to the proposed carriage house being compatible with area carriage houses, which are typical of such structures in the historic district. In his view,

a one-story detached garage would be inconsistent with the district.

9. The Hearing Examiner questioned Mr. Kyler about the actual height and location of the playhouse. She also questioned whether the number and types of variances requested is more than the minimal necessary to afford relief. The Hearing Examiner, Mr. Kyler and Mr. Suter engaged in a spirited colloquy about the playhouse and whether the cumulative variances are the minimum necessary. Mr. Kyler explained he built the playhouse for his daughter. Now that she is older, it is used less. He said he would demolish it.

10. The Hearing Examiner also questioned Mr. Kyler about the need for the height and size of the proposed carriage house. He explained it was a reasonable size for two cars. When questioned by the Hearing Examiner, he testified it would not be used for residential purposes. It would not have a kitchen, sleeping quarters or a bathroom and would not be rented out as a residential use.

#### **CONCLUSIONS OF LAW**

The standards for variances are contained in HCZR § 130.0.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 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 location of the Property within a historic district is a unique physical condition. The red shed appears to be a long-standing structure. The location of the Property

within a historic district is a unique physical condition resulting in practical difficulties in complying with the maximum height and accessory structure square footage 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.**

Because the Hearing Examiner is denying the variances for the playhouse, there is no evidence of the requested variances for the existing red shed and proposed carriage house substantially impairing the appropriate use or development of adjacent property. The granting of the variances 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 proposed carriage house is designed to be compatible other area carriage houses and the red shed is an existing structure. Petitioner did not create the practical difficulties or hardships resulting from the Property's location in a historic district.

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

The proposed carriage house and red shed are reasonably sized. The height of the carriage house is the minimum necessary for a carriage house intended to be compatible with other such structures in a historic district. The requested variances, with the denial of the playhouse variances, are a reasonable use of the Property and therefore the minimum necessary to afford relief.

**ORDER**

Based upon the foregoing, it is this **16<sup>th</sup> Day of March 2016**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of Charles Kyler for variances to increase the maximum height for an accessory structure from 15' to 23'1" for a playhouse and to increase the maximum accessory structure square footage of 600sf by 196sf for a playhouse, is **DENIED**.

It is **FURTHER ORDERED** that the variance to increase the maximum height to 23'3" for an accessory structure carriage house is **GRANTED**;

It is **FURTHER ORDERED** that the variances to increase the 600sf maximum accessory structure area to 1136sf for an 816sf carriage house and a 320sf existing shed are **GRANTED**;

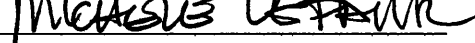
**Provided, however, that:**

1. The variances shall apply only to the uses and structures as described in the petition as depicted on the Amended Plan and not to any other activities, uses, structures, or additions on the Property.
2. No residential habitation use shall be made of the carriage house. No full bath or full kitchen is permitted. It shall not be rented out as a residential use.
3. Petitioner shall obtain all required permits.
4. The building permit plan submitted to the Department of Inspections and licenses shall be scaled and accurately depict the location of the carriage house and red shed, their dimensions and square footage, as approved by this decision and order. The permit plan shall contain a note stating that no residential habitation use shall be made of the carriage house, that no full bath or full kitchen is permitted and that it shall not be rented out as a residential use per Board of Appeals Case No. 15-040V.
5. Petitioner shall comply with all county 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.