

IN THE MATTER OF	:	BEFORE THE
Armando Jimenezh	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA 786-D
	:	RE: AA-20-001

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DECISION AND ORDER

On December 9, 2021, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, conducted a hearing on the administrative appeal of Armando Jimenezh (Petitioner). Petitioner is appealing the July 7, 2021 Decision and Order of the Department of Planning and Zoning (DPZ) in Case No. AA-20-001, in which DPZ denied his administrative adjustment petition to increase the maximum cumulative accessory structure lot coverage on a residential lot in the planned public water and sewer service area from 600 square feet to 704 square feet to legalize an existing pavilion in the R-12 (Residential: Single) Zoning District. The appeal is filed pursuant to §130.0.A.3 of the Howard County Zoning Regulations (HCZR).

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. Arthur Greevy, Esq. represented the Petitioner. Armando Jimenezh and his daughter Karina Herrera testified in support of the appeal. No one appeared in opposition to the Petition.

Petitioner presented the following additional exhibits:

1. Photo of existing pavilion

2. Additional photo of existing pavilion

FINDINGS OF FACT

Based upon the evidence of record, the Hearing Examiner finds as follows:

1. Property Identification and Description. The approximately 0.55-acre property is located at the intersection of Athol Drive and Glenmore Avenue, also identified as 6775 Athol Avenue, Elkridge, Maryland (the Property). The subject property lies in the 1st Election District, and is identified as Tax Map 0038, Grid 0013, Parcel 873, Lots 1039 and 1043. The lot is roughly rectangular in shape (140 feet by 115 feet), and is improved with a single family detached dwelling, a concrete patio, brick and concrete walkways, a paved fire pit, and an approximately 704 square foot covered pavilion located on a 600 square feet patio. The pavilion support columns are embedded in the 600 square foot patio, the pavilion roof covers the 600 square foot patio and is architecturally designed with a 1.5-foot overhang on all sides of the roof, extending beyond the support pillars and the patio. These improvements existed when Petitioner purchased the Property in July 2020. Both the single-family detached dwelling and the detached pavilion are permitted by right in the R-12 zoning district.

The site rises from an elevation of approximately 86 feet in the western corner of the Property to approximately 92 feet at the eastern corner. The lot was created by Plat of Harwood subdivision in 1983. The Property is located within the planned water and sewerage area. More than 50% of the Property is located in the floodplain, however the existing pavilion is not located within the floodplain. The maximum accessory structure lot coverage in this area is 600 square feet. The roof overhang of the existing pavilion exceeds the 600 square foot maximum cumulative accessory structure lot coverage by 104 square feet or 17%.

2. Vicinal Properties. Adjacent properties are also zoned R-12. To the east and northeast of the Property are single family detached dwellings. To the south, southeast, and southwest are undeveloped lots or parcels. To the north and northwest is Athol Avenue.

3. The AA-20-001 Decision and Order. Upon petition from a property owner, HCZR §101.0.F.1 authorizes DPZ to grant an adjustment from the provisions of the bulk regulations in an amount not to exceed 20% of a stated bulk requirement, subject to the same standards applicable to variances granted by the Board of Appeals. Applying these standards (set forth below in the Conclusions of Law), DPZ denied Petitioners administrative adjustment petition to increase the maximum cumulative accessory structure lot coverage in the R-12 zoning district from 600 square feet to 704 square feet, an increase of 17%. DPZ found no unique physical conditions which deprive the owner reasonable use of the Property to support the lot coverage increase and no practical difficulties arising from the application of the accessory lot coverage requirement.

CONCLUSIONS OF LAW

The standards for administrative adjustments and variances are contained in HCZR § 130.0.B.2.a. Per HCZR §101.0.F.1, 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 administrative adjustment 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 an administrative adjustment 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. Compliance with the 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).

With respect to the first prong of the “administrative adjustment”/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 improvement 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., it’s 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, 638 A.2d 1175 (1994)

The subject Property is developed with a single-family detached dwelling, walkways, 2 patios, a fire pit, and the covered pavilion. Due to the existing development and to the extensive floodplain it would be impractical to relocate the pavilion. The pavilion as constructed has a roof overhang, which is architecturally decorative but unnecessary. It is this 1.5-foot decorative roof overhang around the perimeter of the pavilion roof which causes the pavilion to exceed the 600 square foot maximum. The existence of the floodplain combined with the unusual architectural characteristic of the decorative overhang results in a unique condition causing practical difficulty in complying with the 600 feet cumulative accessory lot coverage maximum. The pavilion roof overhang does not increase the impervious surface on the Property. The pavilion complies with all other bulk regulations of the R-12 zoning district. Thus, the roof overhang and the extensive floodplain are unique physical conditions causing the Petitioner practical difficulty in complying with the bulk area requirements for the pavilion roof in accordance with Section 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 requested adjustment for the roof overhang is 104 square feet, 17% above the 600 square foot maximum, and below the 20% allowed pursuant to an administrative adjustment. The pavilion is a permitted use and the additional 104 square feet of roof overhang is undiscernible from adjacent properties. The existing pavilion is an attractive structure which is architecturally compatible with the neighborhood. None of the neighbors appeared in opposition. The administrative adjustment, if granted, will therefore not alter the essential character of the neighborhood in which the Property is located nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance 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 practical difficulty in complying strictly with the bulk regulation requiring a 600 square feet maximum cumulative lot coverage for accessory structures was not created by the Petitioner, who did not build the pavilion, in accordance with Section 130.0.B.2.a.(3). The Petitioner's predecessor in interest constructed the pavilion without a permit, which fact was not disclosed to the Petitioner. Petitioner learned about the irregularity when the Department of Inspections, Licenses and Permits cited Petitioner for constructing the pavilion in the floodplain. It was subsequently determined that the pavilion is not in the floodplain. Petitioner has spent over \$15,000 in attempting to legalize the pavilion.

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

Within the intent and purpose of the regulations the administrative adjustment is the minimum necessary to afford relief, in accordance with Section 130.0.B.2.a.(4).

ORDER

Based upon the foregoing, it is this 9th day of December, 2021, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

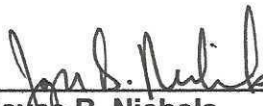
That the Petition on appeal of Armando Jimenezh for an administrative adjustment to increase the maximum cumulative lot coverage for accessory structures to 704 square feet for an existing pavilion in an R-12 (Residential: Single) Zoning District, is hereby **GRANTED;**

Provided, however, that:

1. The administrative adjustment shall apply only to the uses and structures as described in the Petition and Plan submitted and not to any other activities, uses, structures, or additions on the Property.
2. Petitioner shall comply with all state and local laws and regulations.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER



Joyce B. Nichols

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 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.