

IN THE MATTER OF : BEFORE THE
RYAN HOMES, INC. : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
 : HEARING EXAMINER
 : BA Case No. 11-024V

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DECISION AND ORDER

On November 28, 2011, 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 Ryan Homes, Inc., to reduce the 20-foot structure setback to approximately 6.5 feet for stairs in an R-SC (Residential-Single Cluster) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to compliance with the notice and posting requirements of the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. John Carney and Kevin Vowser testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

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

1. Property Identification. The subject property is located on the east side of Cedar Oaks Lane, about 400 feet northwest of Cedar Lane. The subject property is officially identified as Tax Map 29, Grid 17, Parcel 65, Lot 6 and the address is 10922 Cedar Oaks Lane (the

Property).

2. Property Description. The .14-acre (6,000 sq. ft.) Property fronts on Cedar Oaks Lane. It is improved by a recently constructed two-story dwelling with an elevated porch. The stairs (36" wide with a switchback) accessing this porch encroach into the front setback. Access is provided by a driveway in the northwest portion of the site.

3. Adjacent Properties. On the Property's north and south sides are other lots of the Cedar Grove subdivision. A few dwellings in the subdivision have front stairs (Petitioner's Exhibit 2). Across Cedar Oaks Lane is a public drainage and utility easement. To the east is an Open Space Lot.

4. The Variance Request. The Petitioner is requesting a reduction in the required 20-foot structure and setback a public street right-of-way to approximately 6.5 feet for the encroaching stairs.

5. Mr. Carney testified that the Petitioner became aware of the encroachment when the purchaser had a location survey done. He further testified that the purchaser had requested a wider front porch, which caused the encroachment. Ryan Homes no longer offers this option. Mr. Carney also introduced into evidence plans for other lots in the area. These plans indicated that the Property is one of the smallest lots in the subdivision.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.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.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).

In this case, the Property is one of the smallest in the subdivision. Consequently, the Hearing Examiner concludes the size of the lot causes the Petitioner practical difficulty in complying with the setback requirements, 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.

Other lots have similar stairs. Additionally, there is no residence lot directly across from the encroaching stairs and the stairs are landscaped. The variance therefore will not alter the essential character of the neighborhood in which the lot 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.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 arose from the purchased decision to have a wider porch was not created by the Petitioner, in accordance with Section 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 addition is the minimal size needed for the encroachment. Section 128.A.1.c permits stairs to encroach up to 10 feet within a setback, so the additional encroachment is 4.5 feet. Within the intent and purpose of the regulations, then, the variance is the minimum necessary to afford relief, in accordance with Section 130.B.2.a.(4).

ORDER

Based upon the foregoing, it is this 5th Day of December 2011 by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the variance petition of Ryan Homes, Inc. to reduce the 20-foot structure setback to approximately 6.5 feet for stairs in an R-SC (Residential-Single Cluster) Zoning District is **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the uses and structures as described in the petition submitted and as testified to, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFavre

Date Mailed: _____

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.