

IN THE MATTER OF	:	BEFORE THE
	:	HOWARD COUNTY
RUSSEL L. & LYN FANSLER	:	BOARD OF APPEALS
	:	HEARING EXAMINER
Petitioner	:	BA Case No. 13-041V

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DECISION AND ORDER

On March 25, 2014, 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 Russel L. & Lyn Fansler for a variance to reduce the 10-foot side setback feet to seven feet for an 11'x22' porch, filed pursuant to Section 130.0.B.2 of the Howard County Zoning Regulations (the Zoning Regulations).

The 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.

Petitioners were not represented by counsel. Mark Stevens testified on behalf of the Petitioners. No one testified in opposition to the petition.

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 on the north side of Triadelphia Mill Road about 1,100 feet east of Gilbride Lane and is identified as Tax Map 28, Grid 20, Parcel 420, Lot 4 (the Property). It has a street address of 13520 Triadelphia Mill Road.

2. Property Description. The irregularly shaped RR-DEO (Rural Residential: Density Exchange Option) zoned Property is about .9591 acres in size. According to the December 23, 2013 Variance Plan, the Property is subject to a 100-foot stream bank buffer in its western portion. There are several specimen chestnut oak trees on the Property. The Property is currently unimproved. Petitioner is constructing a single-family detached dwelling in the central portion of the lot.

3. Vicinal Properties. Adjacent properties are zoned RR-DEO. The northern and western property is Preservation Parcel A. To the east is Lot 5 of the same subdivision. To the south is non-buildable Preservation Parcel C.

4. Variance Request. Petitioners request a variance from Section 105.E.4.a.(3)(b) to construct a porch, which would encroach three feet into the 10-foot side back. The request would reduce the setback from 10 feet to seven feet.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.0.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made:

(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.

(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.

(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.

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

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.

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 has a highly irregular shape causing practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a.(1). The

reasonably sized porch will be used for a permitted purpose and it will not change the nature or intensity of use. The variance, if granted, will therefore 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).

The practical difficulty in complying strictly with the setback regulation arises from the lot's shape and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

Only a small, triangular section of the 11'x22' porch encroaches into the setback. Within the intent and purpose of the regulations, then, the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.0.2.a.(4).

ORDER

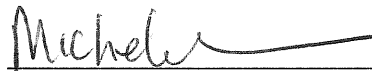
Based upon the foregoing, it is this 3rd April 2014, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Russel L. & Lyn Fansler for a variance to reduce the 10-foot side setback to seven feet for an 11'x22' porch in the RR-DEO 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 not to any other activities, uses, structures, or additions on the Property.
2. The Petitioner shall obtain all necessary permits.

**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 calendar 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.