

IN THE MATTER OF : BEFORE THE

WILLIAM E. ATKINS : HOWARD COUNTY

Petitioner : BOARD OF APPEALS

: HEARING EXAMINER

: BA Case No. 14-034V

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DECISION AND ORDER

On January 8, 2015, 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 William E. Atkins for a variance to increase the maximum lot coverage for accessory structures from 600sf to 900sf for a detached garage in an R-SC (Residential: Single Cluster) Zoning District, filed pursuant to Section 130.0.B.2 of the Howard County 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. Petitioner was not represented by counsel. William Atkins testified in support of the petition. 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 in the 6th Election District on the west side of Old Scaggsville Road about 175 feet south of Wilnor Way. It is identified as Tax Map 47, Grid 19, Parcel 561, Lot 1 and known as 9180 Old Scaggsville Road (the Property).
2. Property Description. The 42,209sf, rectangular Property is improved with a single-family detached dwelling toward the front Property line. A driveway to the dwelling's south and

running close to and along the southern Property lines provides access. The driveway ends behind the dwelling and provides access to a small detached garage. There are several small accessory structures located in the mid and rear portion of the Property.

3. Vicinal Properties. All vicinal properties are also zoned R-SC and improved with single-family detached dwellings.

4. The Variance Request (§ 128.0.A.12.a.(1)(a)). During the 2013 comprehensive zoning plan process, effective October 6, 2013, the Zoning Regulations were amended to impose accessory structures cumulative lot coverage size restrictions on residential lots developed with single-family detached dwellings. For residential lots improved with a single-family detached dwelling in the planned public water and sewer service area, the maximum lot coverage for all accessory structures is 600 square feet. Because Petitioner desires to construct a new 900sf detached garage, he is seeking variance approval to increase the coverage area by 300sf.

5. William Atkins testified that he intends to demolish the small existing garage and all other accessory structures on the Property, which total about 1400sf, and construct a new 30' x 30' garage in its place. The garage would sit 7'6" from the side lot line. The garage is the minimum necessary to enable him to restore his antique cars.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.0.B.2.a of the Regulations. 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 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. *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).

While structures are not generally considered physical conditions, the total square footage of the existing accessory structures on the Property are greater in square footage (1400sf) than the proposed 900sf garage. This is an unusual physical aspect of the Property. The Hearing Examiner therefore concludes this physical condition is unique and results in practical difficulties in complying with the accessory structure lot coverage regulation.

(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.

There is no evidence of the requested variance substantially impairing the appropriate use or development of adjacent property and it will not be detrimental to the public welfare. Indeed, the proposed garage would bring the Property into greater compliance with the accessory building maximum lot coverage regulation.

(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 Petitioner did not create the practical difficulties, which arise from the small size of several accessory structures, not of which can accommodate a vehicle.

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

The proposed variance is for a reasonable use of the Property and therefore the minimum necessary to afford relief.

ORDER

Based upon the foregoing, it is this **9th Day of February 2015**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of William E. Atkins for a variance to increase the maximum lot coverage for accessory structures from 600sf to 900sf for a detached garage 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 as depicted on the Variance Plan and not to any other activities, uses, structures, or additions on the Property.
2. Petitioner shall obtain all required 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 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.