

IN THE MATTER OF : BEFORE THE
JOHN AND NANCY REED : HOWARD COUNTY
Petitioners : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 17-035V

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DECISION AND ORDER

On September 5 and September 28, 2018, 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 John and Nancy Reed (Petitioners) for variances to increase the maximum accessory structure lot coverage from 600sf to 1322.8sf for an 280.8sf (12'x23'4") addition to an existing 962sf workshop/garage accessory structure and an existing 80sf shed, and to reduce the 10-foot side setback to 5'2" feet for an existing shed in the R-20 (Residential: Single-Family) zoning district, filed pursuant to § 130.0.B.2.a of the Howard County Zoning Regulations (HCZR).

Petitioners 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. Thomas Meachum, Esquire, represented Petitioners. No one appeared in opposition to the petition. John Reed testified in support of the petition.

Petitioners introduced into the exhibits as follows.

1. Historical background relating to adverse possession action and efforts to obtain building permits for structures within disputed property area

2. Photographs and Google maps of vicinal properties with accessory structures
3. Revised variance plan, September 28, 2018

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 2nd Election District. It is identified as Tax Map 0031, Grid 007, Parcel 448, and known as 4938 Eastwood Court (the Property).

2. Property Description. The irregularly-shaped .65-acre (28,302sf) cul-de-sac Property is currently improved with a one-story single-family detached dwelling in the north section of the Property, an existing detached garage/workshop in the south section, and an 8'x10' shed in the western section. A driveway runs along the easterly and southeasterly lot lines and provides access to garage/workshop. There is a large paved parking area to the southeast of the dwelling.

3. Vicinal Properties. The adjoining R-20 zoned properties to the north, south, and west are each improved with a single-family detached dwelling.

4. The Initial Variance Petition and Plan. The April 4, 2018 variance petition identified the existing woodshop/garage as 1300sf in area, the proposed addition as 520sf and the total proposed accessory lot coverage as 1675sf, not 1820sf. The petition did not include the square footage of the 8'x10' shed, which Petitioners were planning to demolish. The revised April 4, 2018 variance petition, however, identified the square footage of the existing woodshop as 606sf, and the garage as 356sf (962sf) which is the square footage used in this decision and order. With the 520sf expansion the total proposed square footage was 1482sf. The initial 520sf

expansion was to accommodate a pool pump room, a boiler, and a full bathroom related to a “future pool” shown on the plan as the “future pool location.” The Hearing Examiner at the September 5, 2018 hearing informed Petitioners she would not approve the variance for several reasons. First, the Hearing Examiner was not persuaded the requested variance would not further the transformation of the accessory structure into a residential use. Second, a variance may be granted only for a reasonable use of the property and not merely for the convenience of the applicant. *McLean v. Soley*, 270 Md. 208, 210, 310 A.2d 783 (1973). The need for a variance must be substantial and urgent and not merely for the convenience of the applicant. *Montgomery County v. Rotwein*, 169 Md. App. 716, 906 A.2d 959, (2006). Third, Mr. Reed testified to having obtained building permits to construct a new second bathroom in his basement. Fourth, the Hearing Examiner was not persuaded the pool would actually be constructed. Finally, the Hearing Examiner explained to Petitioners that she has never granted a variance for a bathroom or pool pumping station, nor could she identify any Hearing Authority decision approving same.

The Hearing Examiner therefore continued the hearing to permit Petitioners to amend the variance plan to eliminate the bathroom and show only the minimum relief needed for the pool equipment and boiler. She also permitted Petitioners to seek variance approval for a reduction in the setback for the existing shed located with the 10-foot side setback, which Petitioners were originally proposing to remove.

5. The Final Variance Plan Requests (§§ 128.0.A.12 and 108.0.D.4.c(1)(b)). As revised the final variance plan requests are as follows.

- a. Increase the 962sf existing woodshop/garage with a 280.8sf (12'x23'4") addition for a total area of 1242.8sf for a boiler and swimming pool equipment. No toilet/bathroom is proposed.
- b. Including the existing 80sf shed in the lot coverage area, the total proposed square footage lot coverage is 1322.8sf.
- c. Reduce the 10-foot setback for the 80sf (8'x10') accessory shed to 5'2" feet.

NOTE: The Final Variance Plan did not revise notes on the plan identifying the requesting increase in square footage as 1675sf and the size of the addition to the workshop/garage as 513sf.

6. The Hearing Examiner granted the Final Variance Plan subject to the condition that Petitioners apply for a swimming pool building permit at the same time they apply for the addition and construct the swimming pool.

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 Petitioners 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 §§ 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. 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).

The existing woodshop/garage was constructed before 2013, when the 600sf maximum accessory structure lot coverage was enacted through the comprehensive zoning process. In this rare situation, the structure is a unique physical condition causing practical difficulty in complying strictly with the lot coverage regulations, in accordance with § 130.B.2.a(1). The smaller 80sf shed is an existing structure.

(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 variances are for a reduction in the 10-foot side setback for an existing 80sf shed and a 280.8sf (12'x23.4') addition to an existing 962sf woodshop/garage to house boiler and swimming pool equipment. There is no evidence the requested variances will alter the essential character of the neighborhood or district or impairing the use of development of adjacent property. The petition complies with § 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 Petitioners did not create the practical difficulties, in accordance with § 130.0.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 variances are for a reasonable use of the Property, a 280.8sf (12'x23'4") addition to an existing 962sf woodshop/garage and an 80sf existing shed within a 10-foot side setback, in accordance with § 130.0.B.2.a(4).

ORDER

Based upon the foregoing, it is this **1st Day of November 2018**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of John and Nancy Reed for variances to increase the maximum accessory structure lot coverage for a 280.8sf (1"x23'4") addition to an existing 962sf woodshop/garage, for a total area of 1242.8sf, to house boiler and swimming pool equipment, with no toilet/bathroom; for an existing 80sf shed, which brings the total square lot coverage to 1322.8sf, and; to reduce the 10-foot setback for the 80sf (8'x10') accessory shed to 5'2" feet in the R-20 (Residential: Single-Family) zoning district are **GRANTED**;

Provided, however, that:

1. The variances apply to the two accessory structures shown on the Final Variance Plan only.
2. The approved 280.8sf (12'x23'4") addition to the existing 962sf woodshop/garage is to house boiler and swimming pool equipment only. No toilet/bathroom is permitted. The total approved square footage of this accessory structure is 1242.8sf.
3. The approved 1242.8sf accessory structure shall not be used as a residence or for habitation.
4. The Hearing Examiner does not approve the superseded notations on the Final Variance Plan still referencing the increased total square footage of the workshop as 1675sf and the size of the addition to the workshop/garage as 513sf.
5. The total increase in accessory structure lot coverage approved is 1322.8sf, which includes the existing 80sf shed, the existing 962sf woodshop/garage, and the 280.8sf addition to this structure.
6. Petitioners are required to submit joint permit applications for the proposed addition and the proposed swimming pool. The Department of Inspections, Licenses, and Permits must issue building permits for both the addition and the swimming pool. The swimming pool must be constructed as a condition of approval.

7. The plot plan submitted to the Department of Inspections, Licensing, and Permits shall include a note identifying these conditions of approval.
8. Petitioners shall obtain all required permits.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER

Michele L. LeFavre

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.

In accordance with C.B. 51-2016, § 1 (HCC Sec. 22.902 - Computation of time), if the deadline to appeal is a Saturday, Sunday, or holiday, or if the County offices are not open, the deadline shall be extended to the end of the next open County office business day.