

IN THE MATTER OF : BEFORE THE
 : HOWARD COUNTY
MILDRED A. CORONEOS, TRUSTEE : BOARD OF APPEALS
 : HEARING EXAMINER
Petitioner :
 : BA Case No. 13-013V

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DECISION AND ORDER

On May 20, 2013, 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 Mildred A. Coroneos, Trustee (Petitioner) for a variance to reduce the 30-foot side setback feet to 10 feet for a detached garage, filed pursuant to Section 130.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.

Sang Oh, Esquire, represented the Petitioner. Charles Phillips 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 south side of Frederick Road about 435 feet northwest of Marriottsville Road. It is identified as Tax Map 16, Grid 22, Parcel 80 and is also known as 11335 Frederick Road (the Property).

2. Property Description. The 3.99-acre, RC-DEO (Rural Conservation: Density Exchange Option) zoned Property is a long, narrow lot for its size. It is improved with a single-family detached dwelling located about 37 feet from the front property line and 18 feet from the eastern lot line. The septic reserve area is located to the west of the dwelling. Access is provided by a driveway located between the dwelling and septic reserve. The driveway ends in a parking area behind the dwelling. On the parking area's west side is a frame barn and on the east side, a block shed, which will be removed. There is also a frame barn in the central portion of the Property. The remainder of the Property is lawn. According to the supplement, the dwelling was constructed in the 1920s and is therefore lawfully noncomplying to the Zoning Regulations.

3. Vicinal Properties. Adjacent properties are also zoned RC-DEO. The properties closed to the proposed garage are part of the Brantwood subdivision.

4. Variance Request. The Petitioners request a variance from Section 128.A.12.b.(3)(b) of the Zoning Regulations to construct a 15'x25' detached garage 10 feet from the side structure setback instead of the required 30-foot side setback.

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:

- (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, I find the requested variance complies with Section 130.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 long and relatively narrow Property is a unique physical condition causing practical difficulties in complying with the setback requirement, in accordance with Section

130.B.2.a(1). The detached garage will be used for a permitted purpose and 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 shape of the lot and was not created by the Petitioners, in accordance with Section 130.B.2.a.(3).

The proposed detached garage is a reasonable size. 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.2.a.(4).

ORDER

Based upon the foregoing, it is this 23rd day of May 2013, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

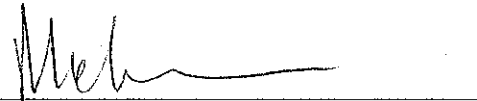
That the Petition of Mildred A. Coroneos, Trustee for a variance to reduce the 30-foot side setback feet to 10 feet for a detached garage, in the RC-DEO Zoning District is **GRANTED**.

Provided, however, that:

1. The variance will apply only to the uses and structures as described in the petition and Variance Plan submitted, and not to any other activities, uses, structures, or additions on the Property.
2. The Petitioners shall obtain all necessary permits.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER



Michele L. LeFaivre

Date Mailed: 5/23/13

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.