

IN THE MATTER OF : BEFORE THE
VICTORIA STEWART-MOORE : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
 : HEARING EXAMINER
 : BA Case No. 11-008V

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DECISION AND ORDER

On June 20, 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 Victoria Stewart-Moore for a variance to reduce the 30-foot side setback up to 4.0 feet for a shed building in an RC-DEO (Rural Conservation: Single Density Exchange Option) Zoning District, 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.

David A. Carney, Esquire, represented the Petitioner. Alex Adams, Esquire, represented Opponents Mr. and Mrs. Walker. Danny Edwards, Lambert Cissel and Douglas Reichenthaler testified in support of the petition. Florence Walker testified in opposition to the petition.

The Petitioner introduced into evidence the exhibits as follows.

- A. Location survey, 3400 Jennings Chapel Road
- B. 1998 aerial photograph of property

- C. 2002 aerial photograph of property
- D. 2004 aerial photograph of property
- E. 2006 aerial photograph of property
- F. Parcel map of area
- G. Excerpt from Howard County Building Code, Section 3.101
- H. Marked up copy of location survey
- I. No Exhibit I
- J. 2004 Howard County Certificate of Appreciation to Stewart Farms
- K. Stewart Farms beef product marketing sheet
- L. Page from coloring book featuring Stewart Farms beef cattle
- M. Aerial of encroaching shed building
- N. Aerial of property
- O. Topographical map of a portion of the property

The Protestants (the Walkers) introduced into evidence the exhibits as follows.

- A. North side of encroaching shed, photograph
- B. South side of encroaching shed, photograph
- C. Hay barn, photograph
- D. Location of encroaching shed next to fence, photograph
- E. Photograph of a person holding up a fence rail
- F. Photograph of a four-rail fence section

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 west side of Jennings Chapel Road about 4,900 feet northwest of Daisy Road and the main area of the subject property is about 2,400 feet southwest of Jennings Chapel Road. The subject property is identified as Tax Map 20, Grid 9, Parcel 76 and it is also known as 3400 Jennings Chapel Road (the Property).

2. Property Description. The 30.11-acre, pipestem lot property is a farm parcel with an Agricultural Land Preservation Easement. The Property is accessed from a 2,400±-foot

pipestem driveway. It is improved by a single-family detached dwelling and a pool located in the southeasterly portion of the Property. Access to the Property is through a 2,400-foot long, 25+-wide driveway running south in a generally straight line along the easterly property line. It then curves past and between several agricultural buildings and ends in a looping turnaround in front of the dwelling.

To the northwest of the dwelling (toward Jennings Chapel Road) is a small barn in the 7.2-acre pasture area. To the dwelling's northeast is a pole barn. To this pole barn's northeast, on the south side of the driveway, is a large white metal building (the arena). To the arena's immediate east is a gray metal building used to store equipment (the equipment building). This building encroaches into the side use setback. A section of the equipment building closest to the arena is about half the width of the arena building. The equipment building's main section is longer and narrower than the arena and the longer section runs parallel with the fence to the east. Across the north side of the driveway is another pole building, the hay barn. The hay barn's south side is open and faces the driveway.

3. Vicinal Properties. Vicinal properties are also zoned RC-DEO. Parcel 10 to the north and west is a 50+acre farm parcel with an agricultural easement. To the east, Lot 1 of Parcel 57 is a 130+ acre farm with an agricultural easement. Parcel 53 to the south is a 170-acre State of Maryland park.

4. The Petition. The Petitioner is requesting a retroactive variance from Zoning Regulations Section 104.E.4.a.(3) to reduce the 30-foot side setback up to four feet for a metal agricultural equipment building.

5. Ms. Stewart-Moore testified that the farm sells pasture-fed Limousin beef cattle, eggs and, occasionally, hay. Most of her farm is in hay. Her small property was accepted in the program because many of the surrounding properties have agricultural easements.

6. Describing the Property, Ms. Stewart-Moore testified to developing the use of her property in consultation with the Soil Conservation Service, which assisted her in determining the most appropriate agricultural use of the land based on the Class II and Class III soil types. The different uses and the physical condition of the Property are depicted on Petitioner's Exhibit H. The northernmost portion of the property, about 6.6 acres is put to hay and pasture use due to the sloping topography and runoff in the area. There is also a 5.2-acre area in hay, and a 7.2-acre area in pasture. The 7.2-acre area is in pasture for cows and horses because it is too hilly to farm and for farm equipment. The southwesterly forested section has a stream running through it. The use of the land allows Ms. Stewart-Moore to rotate use of the different sections to conserve soils.

7. Petitioner's Exhibit H also depicts the location of the electrical lines. Ms. Stewart-Moore explained the electrical lines to her house come from Hipsley Road. It originally came to her house, then she extended it west to the arena and later to the equipment barn.

8. Explaining why she placed the encroaching equipment barn in its current location, Ms. Stewart-Moore testified the location was driven by the property's topography, the need to conserve the agricultural lands and the effect of the prevailing northwest winds on her property during snow storms. Referring to Petitioner's Exhibit O, she stated the encroaching equipment

barn was sited at its location because this is a plateau area. From here, the Property drops and then rises to the north and west and the prevailing winds come from the northwest.

Owing to the topography and the effect of the prevailing winds, it is very difficult to plow the driveway and get out to Jennings Chapel Road when there is a bad snowstorm. In December 2010, a neighbor owning a tractor with six-foot wheels drove across his sod farm and plowed her driveway, which being perpendicular to the prevailing winds had too much snow on it to be plowed. She also related past experiences with getting out during bad storms. One time, a neighbor had to walk up to the tractor barn, and after learning that he could not clear the snow with a plow, dug her out with a shovel. The equipment building is therefore sited at the head of the road, so she can head right down the sloping driveway to plow it. During bad snowstorms, she used what was apparently an old country road on what is now the Walker property, which enabled her to drive from the plateau on her property to a plateau on the Walker property to reach Jennings Chapel Road, but this means of access is no longer available.

Ms. Stewart-Moore continued her testimony, explaining that a 2003 snow fall collapsed the original equipment building next to the shop, which has electricity. She replaced the collapsed building with a steel building, which is stronger than a pole barn. The steel building protects the equipment and there are doors to the north and south, in case she needs to get out from the south side if the north side is blocked by snow. The equipment building houses two tractors, a bulldozer, a snow blower, two hay bailers, a bushhog (mower), and other small farm equipment. They occupy the entire shed. In the winter, she parks the equipment inside to give her two-way access. An electrical supply is needed because her equipment is older and

needs to be plugged in during the winter to start. The trees on the adjoining property help block the visibility of the encroaching shed. There is no effect on the adjoining property because the Walker house is more than 2,000 feet away.

9. During cross-examination, Ms. Stewart-Moore testified to locating most of the farm buildings some distance from her house. When questioned as to whether she could have built the 60-foot long equipment barn to the south of the arena, she explained that she could not have constructed it there because it would block the doors. When asked why she could not use the hay barn to store equipment, she stated that she needed it to store hay and could not risk a fire. Moreover, there is no electricity to the hay barn or small sheds. She could have erected the equipment barn in the hayfield but would lose agricultural use of this land.

10. When questioned by the Hearing Examiner, Ms. Stewart-Moore testified that none of the agricultural pole buildings on the property required a building permit.

11. Danny Edwards testified to working for Ms. Stewart-Moore since 1999. He mows grass, stacks the hay, and helps dig her out during snowstorms. There was once an L-shaped building in the same area as the encroaching barn was there in 1999. When wind blows the snow across her property, it can be four to six feet deep along the road. The encroaching barn's location is necessary to enable equipment to be brought out to clear the snow. He agreed that it is sited on the proper location. It could not be placed near one of the other barns because it would be flooded. The siting of the equipment shed is also based on the location of available electrical service.

12. Lambert Cissel testified to being the adjoining western, northwesterly neighbor. He helps Ms. Stewart-Moore out during storms. He plows snow for vicinal properties. His son once had to give up helping Ms. Stewart-Moore out of a snow storm. He explained that you have to consider where you push snow. You also want to place barns away from a house for odor, flies.

13. Douglas Reichenthaler testified to being once married to Ms. Stewart-Moore. He explained that bad snows sometimes caused them to walk into the property or use horses, and that once it took three days to clear the snow. In the past, they had access to the adjoining property during storms when they couldn't get out. The snowdrifts are horrendous, sometimes five feet high. Drifting makes getting out harder and it takes several runs to move the snow to clear the driveway. The barn gives a clear shot, with an open door, which can be opened, the side protected from the wind. The hay barn is not a good location for the equipment.

14. Florence Walker testified to being the adjoining property to the east. Referring to Protestant's Exhibits E and F, she testified that it depicts a four-board section of the fence in front of Ms. Stewart's Moore's fence. Her husband erected it because Ms. Stewart-Moore and her daughter would remove their three-board fence and ride on their property. According to Mrs. Walker, the encroaching building is somewhat farther from the road that it appears in the photographs and that there is a fair amount of land around the building. During cross-examination, she testified to the Moores trespassing on her property.

15. In her rebuttal testimony, Ms. Stewart-Moore testified that the equipment barn's location on the hill allows her to drive down the roadway with momentum and without making

a turn on ice and snow. Every winter since 1972, except when she was overseas, she had to be concerned about all the things farmers need to be concerned about, including fires. Locating a hay barn and a tractor barn near it posed potential fire problems. The equipment building has been up for about eight years and until now, there have been no complaints about its location.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. Pursuant to this section, I 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, 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.

Compliance with this first criterion is a two-part test. 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 irregular in shape. It is a pipestem or porkchop shaped Property with an extremely long driveway. The Property also has irregular topography. The improvements are sited on high ground, close to the rear property line. From here the land rises and falls into small valleys and slopes. Water runs from the northernmost section and there is a wooded stream in the southwesterly section.

Other important existing features on the site are the types and location of the agricultural soils. Ms. Stewart-Moore testified to developing the agricultural use of her land in conjunction with the Soil Conservation Service and she did not want to disturb the area in farm because the Property is subject to an agricultural preservation easement.

It was Ms. Stewart-Moore's further testimony that the unique physical conditions on her Property causes practical difficulties or unnecessary hardships in complying strictly with the 30-foot setback. The Hearing Examiner finds compelling Ms. Stewart-Moore's testimony about what in the Hearing Examiner's opinion is extreme difficulty in getting out equipment to clear the driveway during a bad snow storm. Without a variance, Ms. Moore would be faced with disrupting agricultural soils and her animal husbandry and horse operations to locate a complying agricultural equipment building.

The Hearing Examiner therefore concludes the lot's irregular shape and exceptional topography, the property's drainage features, and the location and type of agricultural soils are

unique physical conditions, causing 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.

The Findings of Fact support the conclusion that the encroaching equipment building was erected about eight years ago. Metal agricultural buildings are commonplace in Howard County's rural landscape and two or more of these buildings are often clustered on farm properties. The adjoining land, Lot 1 of Parcel 57 is a 130+ acre farm with an agricultural easement. The nearest dwelling to the east property line and the encroaching building is more than 2,000 feet away. The Hearing Examiner concludes the requested variance will not alter the essential character of the neighborhood or district in which the lot is located, 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 difficulties arise from the Property's shape and topography, the location of soils and streams, and were 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 encroachment into the setback for the existing dwelling is the minimum necessary to provide relief for a reasonably sized equipment barn. 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 29th day of June 2011, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

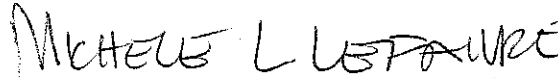
That the Petition of Victoria Stewart-Moore for a variance to for a variance to reduce the 30-foot side setback up to 4.0 feet for a metal agricultural shed building in an RC-DEO (Rural Conservation: Single Density Exchange Option) Zoning District, is hereby **GRANTED**;

Provided, however, that:

1. The variance shall apply only to new structure and not to any other structures.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER



Michele L. LeFaivre

Date Mailed: 6/30/11

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.