

IN THE MATTER OF : BEFORE THE
Betty L. Weickgenannt : HOWARD COUNTY
 : BOARD OF APPEALS
Petitioner : HEARING EXAMINER
 : BA Case No. 13-030V

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DECISION AND ORDER

On November 26, 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 Betty L. Weickgenannt for a variance to reduce the 50-foot setback from a public street right-of-way to approximately 30 feet for an addition in an R-20 (Residential: Single Family) Zoning District, 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.

The Petitioner was not represented by counsel. Betty L. Weickgenannt, the project contractor, in support of the petition. No one appeared to testify 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 5th Election District on the northwest side of the Scarborough Way cul-de-sac. It is identified as Tax Map 35, Grid 12,

Parcel 370, Lot 19 and is also known as 6143 Scarborough Way (the Property). It is part of the Owen Brown Estates Subdivision.

2. Property Description. The 15,158 square foot, irregularly shaped Property is located on the cul-de-sac's turnaround. The Property is improved by a 2-story, single-family detached dwelling with a basement. A below-grade garage is accessed from a steeply graded driveway near the property's northern lot line.

3. Vicinal properties. Adjacent properties are zoned R-20 and are improved with single-family detached dwellings, many with one and two-story attached garages.

4. Zoning History. In BOA Case No. 08-011V, the Board of Appeals Hearing Examiner granted the property owners' variance request to reduce the public street right-of-way setback for an addition. This approval has expired.

5. The Variance Request. The Petitioner is requesting a variance to reduce the 50-foot front setback to 30 feet for a 22-foot by 25-foot attached garage addition to the dwelling's front and side. The garage will feature clapboard siding to match the house. The petition states the existing garage is below grade and floods in heavy rain and snow.

6. The Hearing Examiner observed during her site visit that the Property is narrower along its front section in comparison with area properties.

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. 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).

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).

In this case, the Property's irregular shape and the narrowness of its front section cause the public street setback to impact it disproportionately. The Hearing Examiner therefore concludes these physical conditions are unique and result in a practical difficulty in complying with the front setback.

(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.

Although the addition will bring the residence closer to the street, there is no evidence of any alteration in the essential character of the neighborhood or district in which the lot is located, of any substantial impairment of the appropriate use or development of adjacent property or that it will 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.

The owners did not create the practical difficulties.

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

The proposed addition is a reasonable size.

ORDER

Based upon the foregoing, it is this 9th day of December 2013, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of Betty L. Weickgenannt for a variance to reduce the 50-foot setback from a public street right-of-way to approximately 30 feet for an addition in an R-20 (Residential: Single Family) 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 required permits.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFavre

Date Mailed: _____

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.