

IN THE MATTER OF : BEFORE THE

KYLE HUMPHREY & : HOWARD COUNTY
ASHLEY WHITMAN :

Petitioners : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 17-022V

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DECISION AND ORDER

On October 23, 2017, 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 Kyle Humphrey and Ashley Whitman (Petitioners) for retroactive variances to reduce the 10-foot side setback to 6 feet and the 10-foot rear accessory structure setback to 5 feet for an accessory structure (shed) in an 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 notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure. Petitioners were not represented by counsel. Kyle Humphrey testified in support of the petition. No one appeared in opposition to the variance petition.

Petitioners introduced into evidence the exhibits as follows.

1. A-G. Photographs of the old and new sheds

FINDINGS OF FACT

Based upon the evidence of record, the Hearing Examiner finds as follows:

1. Property Identification. The 0.598-acre subject property is located on the southeast corner of the Grace Court intersection with Alice Avenue. It is identified as Tax Map 31, Grid 7, Parcel 384, Lot 70, located in the 2nd Election District, and known as 4926 Grace Court (the Property). The Property is located in an R-20 zoning district and is Lot 70 in the Montgomery Knolls Section 4 subdivision.

2. Property Description. The corner lot property is irregularly shaped, with four lot lines of different lengths. Only one corner of the Property has the typical 90-degree angle configuration. This lot configuration caused the dwelling to be constructed at an angle to the Grace Court intersection with Alice Avenue.

3. Vicinal Properties. The adjacent properties are also zoned R-20, are all residential lots in the same subdivision and are each improved with a single-family detached dwelling to comply with bulk regulations.

4. Agency Comments. The Department of Planning and Zoning does not issue technical staff reports for variance petitions on residential zoned property. The Department of Inspections, Licenses, and Permits commented as follows. "The 12'x20'shed is required to have a building permit . . . The shed cannot be located closer than 5 feet to a property line."

5. The Variance Requests. Petitioners are requesting variances to reduce the 10-foot side setback to 6 feet and the 10-foot rear accessory use structure setback to 5 feet for an accessory structure (shed). The petition as submitted request a reduction in the 10-foot rear accessory structure setback to 4 feet. The shed would be located in the southwest corner. The photograph

of the shed submitted with the petition and the photographs introduced into evidence as Exhibit 1 depict high fences on adjoining Lots 69 and 71 in the area of the shed.

6. Petitioner Kyle Humphrey testified that the existing shed's construction allows him to relocate it 5 feet from the rear lot line.

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 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 variances comply with HCZR § 130.0.B.2.a(1) through (4), and therefore may be granted, as conditioned.

(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 petition, the Property's 4 irregular lot lines and configuration cause practical difficulty in complying strictly with the setback regulations, in accordance with HCZR § 130.0.B.2.a(1).

(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 shed would be located in a corner location, where there are neighbors' fences along the requested variance lot lines. These fences screen the use. The granting of the variances would not alter the essential character of the neighborhood or district in which the lot is located, or be detrimental to the public welfare, in accordance 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 practical difficulty in complying strictly with the setback regulations arises from the irregular shape of the Property, 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 requested reduced setbacks are for a reasonably sized shed, in accordance with § 130.0.B.2.a(4).

ORDER

Based upon the foregoing, it is this **16th day of November 2017**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

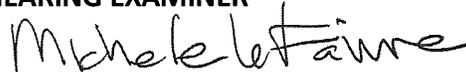
That the Petition of Kyle Humphrey and Ashley Whitman for retroactive variances to reduce the 10-foot side setback to 6 feet and the 10-foot rear accessory structure setback to 5 feet for an accessory structure (shed) in an R-20 (Residential: Single Family) zoning district, is hereby **GRANTED**;

Provided, however, that:

1. The variances shall apply only to the accessory structure as described in the petition and plan, as modified by approval condition #2, and not to any new structures, uses, or change in uses on the subject property or to any additions thereto.
2. The rear accessory structure setback shall be five feet.
3. Petitioners shall comply with all county laws and regulations.
4. Petitioners 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.