

IN THE MATTER OF	:	BEFORE THE
Eric Wachsman	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 21-037V

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DECISION AND ORDER

On April 28, 2022, 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 Eric Wachsman (Petitioner) for a variance to reduce the minimum side yard setback for accessory structures, on lots more than 3 acres, from a public street right-of-way, from 60 feet to 24 feet, a reduction of 26 feet, to legalize an existing multi-purpose sports court/patio and pergola, at Tax Map 45, Grid 06, Parcel 2, Lot 30, also identified as 9469 Lovat Road, Fulton, in the RR (Rural Residential) DEO (Density Exchange Option) Zoning District, filed pursuant to §130.0.B.2 of the Howard County Zoning Regulations (the HCZR) for a variance from §105.0.E.4.a.(3)(a).

The Petitioner 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. Petitioner Eric Wachsman testified in support of the Petition. No one appeared in opposition to the Petition.

FINDINGS OF FACT

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

1. Property Identification and Description. The approximately 3.06 acre irregularly shaped property (7 property boundaries) is located on the east side of East Lovat Road, east of its intersection with Reservoir Road, and on the north side of Elizabeth Court. The subject Property lies in the 5th Election District, is identified as Tax Map 45, Grid 06, Parcel 2, Lot 30, and is known as 9469 Lovat Road, Fulton, Maryland (the Property). The Property is currently improved with an existing septic easement located to the rear of the property, a single-family detached dwelling with a private circular paved driveway extending west to Lovat Road, a 3,440 square foot multi-purpose sports court/patio, a 588 square foot pergola, and an extension of the Patuxent River watershed tree canopy as part of the Howard County Turf To Trees program in which area 187 trees were planted on November 5, 2021.

2. Adjacent Properties. Adjacent properties are in the RR-DEO Zoning District and are either undeveloped or developed with single family detached dwelling units (two). No other homes can be built due to the proximity of the Patuxent River watershed.

3. Roads. Lovat Road and Elizabeth Court have two travel lanes.

4. Water and Sewer Services. The Property is not within the Metropolitan District and the Planned Service Area, and the Property is serviced by private water and septic.

5. The Requested Variance. Petitioner has constructed a 3,440 square foot multi-purpose sports court/patio with an attached 588 square foot pergola located to the rear of the single-family detached dwelling and within the 60-foot right-of-way from a public street (Elizabeth Court). Petitioner is requesting a 26-foot variance, providing 24

feet of the 60-foot setback, in order to legalize these exiting improvements as shown on the Variance Exhibit, in accordance with §105.0.E.4.a.(3)(a). The multi-purpose sports court/patio and pergola will be utilized for single-family dwelling purposes consistent with the Property's RR-DEO District zoning.

6. Agency Comments. There are no Department or agency objections to the proposed variances.

CONCLUSIONS OF LAW

The standards of 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 §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.

Compliance with the 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).

The variance requested is necessitated by the irregular shape of the lot, the location of the septic reserve area, the sloping topography of the Property, and the presence of the extension of the Patuxent River watershed tree canopy as part of the Howard County Turf To Trees program in which area 187 trees were planted on November 5, 2021.

As shown on the Variance Exhibit, the Property is an irregular shape with seven (7) property lines creating atypical angles throughout the Property. This unusual shape and the location of the sewage disposal area limit the developable area in the rear of the lot, pushing the building envelope to the southwestern portion of the Property. The Property has a severe downward slope (approximately 40 feet) in topography from the single-family detached dwelling to the southeast. The multi-purpose sports court/patio and pergola have been constructed in the flattest area which could accommodate these uses without excessive excavation into the hillside and avoiding the need for excessive fill to provide a level area. These unique conditions result in practical difficulties and hardships in strictly complying with the bulk regulations of the RR-DEO Zoning District and prevents the reasonable use of the Property in accordance with §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 RR-DEO zoning district was established to allow low density residential development within a rural environment through both cluster and non-cluster development. Petitioner's requested variance seeking to reduce the side yard setback for accessory structures, on lots greater than 3 acres, from a public right-of-way, from 60 feet to 24 feet along Elizabeth Court, will not be perceptible to the surrounding residential neighborhood, it will not alter the essential character of the neighborhood or district and will not impact the appropriate use and development of adjacent properties, nor will it alter the essential residential character of the neighborhood. There are only two homes nearby, Lot 29 (9405 Elizabeth Court) purchased after the construction of the multi-purpose sports court/patio and pergola, and thus aware of sports court/patio and pergola prior to purchase, and Lot 28 (9409 Elizabeth Court) whose owners use the multi-purpose sports court/patio regularly. The HOA also uses the multi-purpose sports court/patio and pergola to host HOA events. Properties located to the south of the Property are utilized for agriculture and when fully grown, the 187 trees planted on-site as part of the extension of the Patuxent River watershed tree canopy by the Howard County Turf To Tree program will provide prevent visibility of the multi-purpose sports court/patio and pergola. The multi-purpose sports court/patio and pergola will not be detrimental to the public welfare as it will not produce excessive noise, odors, or other adverse effects that would negatively impact vicinal properties.

The variance, if granted, will therefore not alter the essential character of the neighborhood in which the lots are located nor substantially impair the appropriate use or development of adjacent property, nor 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 difficulties and hardships in complying strictly with the bulk regulations are a result of the irregular shape of the Property, the location of the septic area, the severely sloping topography, and the 187 trees planted onsite as part of Howard County's Turf To trees program. It is noted that Petitioner had many contacts with various County departments prior to construction of these uses and believed that he was proceeding in accordance all laws and required permits. Unfortunately, there was confusion between the different inspectors and departments in their application of the law resulting in the need for the instant variance. These practical difficulties and hardships were not created by the Petitioner, 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 variance sought, to reduce the minimum side yard setback from a public right-of-way, on lots greater than 3 acres, for accessory structures (multi-purpose sports court/patio and pergola), from 60 feet to 24 feet, a reduction of 26 feet, is the minimum

decrease necessary to afford relief and permit reasonable use of the Property. A regular tennis court is 8,712 square feet and the multi-purpose sports court/patio has been reduced in size to 3,440 square feet, the minimum size which would accommodate the sports games. A lesser variance would not permit the types of sports games which the court is designed to accommodate. Within the intent and purpose of the regulations, this variance is the minimum necessary to afford relief, in accordance with §130.0.B.2.a.(4).

ORDER

Based upon the foregoing, it is this 5th day of May, 2022, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of Eric Wachsmann for a variance to reduce the minimum side yard setback for accessory structures, on lots more than 3 acres, from a public street right-of-way, from 60 feet to 24 feet, a reduction of 26 feet, to legalize an existing multipurpose patio/sports court and pergola, at Tax Map 45, Grid 06, Parcel 2, Lot 30, also identified as 9469 Lovat Road, Fulton, in the RR (Rural Residential) DEO (Density Exchange Option) Zoning District,

be and is hereby **GRANTED;**

Provided, however, that:

1. The variance shall apply only to the use as described in the Petition and Variance Plan submitted and not to any other activities, uses, structures, or additions on the Property.

2. Petitioner shall obtain all necessary permits.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER



Joyce B. Nichols

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.