

IN THE MATTER OF	:	BEFORE THE
MATTHEW R. AND SHELLY	:	HOWARD COUNTY
JS. FOX	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 09-034V

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DECISION AND ORDER

On December 7, 2009, 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 Matthew R. and Shelly JS. Fox (the "Petitioners") for a variance to reduce the 30-foot rear setback to 25 feet for an addition in an R-SC (Residential: Single Cluster) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners certified to compliance with the notice, advertising and certification requirements of the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioners were not represented by counsel. Matthew Fox and Shelly Fox testified in support of the petition. No one testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The 7,884-square foot, five-sided property is located on the north side of the terminus of Red Apple Lane. It is located in the 6th Election District and identified on Tax

Map 42 as Block 21, Parcel 873, Lot 34 (the "Property"). The Property is also known as 9574 Red Apple Road.

2. The five-sided Property fronts on the Apple Lane cul-de-sac. Its curving frontage is about 35 feet wide. The east lot line is about 102 deep, the west, about 109. The two rear lot lines are about 60 feet and 54 feet in width.

3. The Property is improved with a two-story, vinyl-sided single-family dwelling sited about 37 feet from the front lot line. To comply with the applicable setbacks, the dwelling was constructed at an angle to the cul-de-sac. Consequently, the dwelling's northeast corner lies within a few feet of the 30-foot setback from the 54-foot long rear property line.

4. Vicinal Properties. Adjacent properties are also zoned R-SC and are each improved with similar single-family dwellings. To the Property's rear is Open Space Lot 66.

5. The Proposal. The Petitioner is requesting a variance from Section 110.D.4.d(1)(c)(i) to reduce the 30-foot setback rear setback to 25 feet for an addition to their family room and kitchen. The petition states the variance would permit the back of the house to maintain an even look. As depicted on Petitioner's Exhibit 1, only a small angular section of the family room would encroach into the setback.

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's five-sided shape and inconsistently sized lot lines are unique conditions cause the Petitioners practical difficulty in complying with the setback requirements, in accordance with Section 130.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 encroachment would occur into a rear setback. To the Property's rear is an Open Space Lot. These conditions will mitigate the visibility of the proposed addition. To ensure the variance will not result in a consequent encroachment into the Open Space Lot, which would be detrimental to the public welfare, I am requiring the Petitioners to construct a fence similar in style and height to neighboring properties along the two rear property lines as a condition of approval.

(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 Petitioners did not create the practical difficulties in complying strictly with the setback regulations, 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 petition states the encroachment is intended to maintain the line of the back of the house. The variance is therefore the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER


Based upon the foregoing, it is this 17th Day of December 2009, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Matthew R. & Shelly JS. Fox for a variance to reduce the 30-foot rear setback to 25 feet for a addition in an R-SC (Residential: Single Cluster) 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 Petitioners shall install a fence that is similar in shape and color to area fences along the rear property line. The fence shall comply with the Zoning Regulations.
3. The Petitioners shall obtain all necessary permits.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

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.