

IN THE MATTER OF : BEFORE THE  
**Marcel Mileo** : HOWARD COUNTY  
Petitioner : HEARING EXAMINER  
: Case No. BA 23-016V

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### **DECISION AND ORDER**

On October 5, 2023 and November 14, 2023, the undersigned, serving as the Howard County Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the residential variance petition (“Petition”) of Marcel Mileo, Petitioner, for variances from (1) Section 107.0.D.4.d(l)(b) of the Howard County Zoning Regulations (“HCZR”) for a Residential Variance to reduce the 7.5 foot side setback to 5 feet to accommodate a single family dwelling with an enclosed porch and deck, and (2) Section 107.0.D.4.d(l)(c) of the HCZR for a Residential Variance to reduce the 25 foot rear setback to 15 feet to accommodate a single family dwelling with an enclosed porch and deck. The property is located in the R-ED-MXD-3 (Residential: Environmental Development/Mixed Use) Zoning District on that land belonging to Charanjit Singh and Kirani Kaur (“Owners”).<sup>1</sup>

The Petitioner provided certification at the hearing on October 5, 2023, that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code<sup>2</sup>. I viewed the property as required by the Hearing Examiner Rules of Procedure.

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<sup>1</sup> The Property is part of a mixed use (MXD-3) development. Under the MXD regulations, the approving authority may establish bulk regulations different from the bulk regulations of the underlying zoning district. The rear setback from the principal structure in the R-ED zoning district is 25 feet, and there was no evidence showing that the setback approved is different from this. Under Section 128.0. Supplementary Zoning District Regulations, “Open and enclosed porches and decks, and the stairways or ramps attached thereto” are allowed to encroach 10 feet into the rear effectively reducing the applicable rear setback distance to 15 feet. Hearing authority approval is not needed for the 10 foot encroachment allowance under Section 128.0. Thus, to the extent that the requested structures are not closer than 15 feet from the rear property line, a rear setback variance is not necessary.

<sup>2</sup> At the October 5, 2023, hearing, it was determined that the Petitioner had failed to file certification that the hearing was advertised and that the property was posted as required by the Howard County Code. The hearing was continued to November 14, 2023, to allow the property to be reposted and the hearing readvertised.

The Petitioner was not represented by counsel. Petitioner appeared on behalf of the Owners and testified in support. No one else appeared and testified.

### **FINDINGS OF FACT**

**A. Property.** The “Property” is located on the south side of Martha Way at the corner of Martha Way and Gunnar Drive and is known as 11501 Martha Way. It is also known as Tax Map 46, Grid 2, Parcel 113, Lot 47, and contains about 0.31 acres. The Property is in the 5th Election (Voting) District and the 4th Council District.

**B. Vicinal Properties.** All adjoining properties are zoned R-ED-MXD-3. The lots to the south and east of the Property contain single family residences.

**C. Variances Requested.** Petitioner requests variances from Section 107.0.D.4.d(l)(b) of the HCZR to reduce the 7.5 foot side setback to 5 feet to accommodate a single family dwelling with an enclosed porch and deck, and from Section 107.0.D.4.d(l)(c) of the HCZR to reduce the 25 foot rear setback to 15 feet to accommodate a single family dwelling with an enclosed porch and deck (see Footnote 1).

**D. Testimony.**

Mr. Mileo testified and explained the variance sought and the underlying reasons why the Petitioner seeks the variances. He stated that the Property is unique because the builder installed the home very close to the east side boundary and angled the home such that the southeast corner of the home is at the southeast corner of the BRL. He states that the amount of area within the BRL behind the home is insufficient to allow the installation of a 55 foot long and 20 foot deep enclosed deck and open deck structure along the entire rear of the home. Because the effective rear setback is 15 feet and the side setback is 7.5 feet, he stated that the southeast corner of the 55 by 20 foot deck would encroach into the side setback without a variance.

He stated that other homes in the neighborhood have “similar projects” and that he believed that the variance would be granted as a matter of course.

### **CONCLUSIONS OF LAW**

The standards for variances are contained in Section 130.B.2.a of the Zoning Regulations. That section provides that a variance may be granted “where all of the following determinations are made”:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical conditions, 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.

(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.

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

(5) That no variance be granted to the minimum criteria established in Section 131.0 for Conditional Uses except where specifically provided therein or in an historic district. Nothing herein shall be construed to prevent the granting of variances in any zoning district other than to the minimum criteria established in Section 131.0.

Based upon the foregoing Findings of Fact, and for the reasons stated below, the requested variances *do not* meet the criteria necessary for the granting of variances and therefore shall be denied.

#### **1. Section 130.B.2.a (1)**

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.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. Second, 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).

The Property is *not* unusual or different (in a negative way) from the nature of other properties in the area. In fact, the Property is much larger than other properties in the neighborhood. It is true that the Property is on a corner lot and that the side setback along Gunnar Drive is 20 feet rather than 7.5 feet, but the side setback along Gunnar Drive is not where the variance is requested. In fact, the home on the Gunnar Drive side includes a bump out for a garage for a third car, and the deck could be moved closer to the side boundary with Gunnar

Drive by at least 10 feet and still not encroach into the side setback along Gunnar Drive.

Further, I do *not* find that there is a practical difficulty that arises such that compliance with the zoning regulations would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Mr. Mileo stated several times that there are similar projects in the neighborhood, but even without a variance, the Owners can build a significantly sized deck. It is not a practical difficulty or burden to not be able to build a 55 x 20 foot deck along the entire rear side of the home when a substantial sized deck can be built without a variance.

*The criteria set forth in Section 130.B.2.a (1) are not met.*

**2. Section 130.B.2.a (2)**

I find 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.

*Petitioner therefore meets the criteria of Section 130.B.2.a (2) of the Zoning Regulations.*

**3. Section 130.B.2.a (3)**

Because there are no hardships or difficulties, this requirement is not applicable.

*Section 130.B.2.a(3) is not applicable.*

**4. Section 130.B.2.a (4)**

The requested variance is *not* the minimum variance necessary to afford relief. As stated above, even without the variances, the deck could be moved toward the side boundary with Gunnar Drive at least 10 feet and not encroach into the side setback along Gunnar Drive. Further, even without a variance, the Owners can build a significantly sized deck

*Within the intent and purpose of the regulations, then, the requested variance is not the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).*

5. **Section 130.B.2.a(5) [Not applicable to this Petition.]**

**ORDER**

Based upon the foregoing, it is this **13th day of December 2023** by the Howard County Hearing Examiner:

**ORDERED**, that the request for a variance from Section 107.0.D.4.d(1)(b) of the HCZR to reduce the 7.5 foot side setback to 5 feet to accommodate a single family dwelling with an enclosed porch and deck, shall be and hereby is **DENIED**; and it is

**FURTHER ORDERED**, that the requested variance from Section 107.0.D.4.d(1)(c) of the HCZR to reduce the 25 foot rear setback to 15 feet to accommodate a single family dwelling with an enclosed porch and deck, is not necessary, because under Section 128.0. Supplementary Zoning District Regulations, “Open and enclosed porches and decks, and the stairways or ramps attached thereto” are allowed to encroach 10 feet into the rear, effectively reducing the applicable rear setback distance to 15 feet.

**HOWARD COUNTY HEARING EXAMINER**

\_\_\_\_\_  
Katherine L. Taylor

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.