

IN THE MATTER OF : BEFORE THE  
**Jae Chon** : HOWARD COUNTY  
Petitioner : HEARING EXAMINER  
 : Case No. BA 23-020V  
:.....

### **DECISION AND ORDER**

On December 6, 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 Jae Chon, Petitioner, for a variance from Section 107.0.D.4.d(l)(c) of the Howard County Zoning Regulations (“HCZR”) for a Residential Variance to reduce the 25 foot rear setback to 13 feet to accommodate a single family dwelling with an enclosed porch located in the R-ED-MXD-3 (Residential: Environmental Development/Mixed Use) Zoning District on that land belonging to Petitioner.<sup>1</sup>

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Petitioner appeared and testified in support. No one appeared and testified in opposition to the Petition.

### **FINDINGS OF FACT**

**A. Property.** The Property is located on the south side of Stauffer Avenue and is known as 8219 Stauffer Avenue. It is also known as Tax Map 46, Grid 2, Parcel 113, Lot 135, and

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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.

contains about 0.17 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 front and sides of the Property contain single family residences. The lot behind the Property, according to Petitioner, is owned by Howard County, Maryland and is open space.

**C. Variances Requested.** Petitioner seeks a variance from HCZR Section 107.0.D.4.d(1)(c) for a Residential Variance to reduce the 15' setback to 13' to accommodate a single-family dwelling with a covered porch.

**D. Testimony.**

Jae Chon testified and explained the variance sought and the underlying reasons why the variance is needed. He stated that the Property is very shallow – that the amount of area behind the home is insufficient to allow the installation of a proper sized covered porch. He stated that because the house is within feet of the rear line of the BRL, there are only 26 feet between the rear edge of the house and the rear property line. Because the setback is 15 feet, only a shallow porch can be added without a variance.

He stated that other homes in the neighborhood either have deeper yards or have more space between the rear line of the BRL and the rear boundary allowing deeper additions. He stated that since the property abutting theirs is County open space, the variance will not adversely affect the rear property owner.

Mr. Chon stated that a covered porch is necessary to allow them to enjoy part of their backyard area during the hottest parts of the day, because the sun exposure during a portion of the day is intense. He stated that an additional 3 feet of porch (beyond the allowed 10 feet) will be sufficient and is the minimum necessary to afford relief.

### **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 variance meets the criteria necessary for the granting of a variance and therefore shall be granted.

#### **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 unusual or different from the nature of other properties in the area. Mr. Chon stated that the Property is very shallow – that the amount of area behind the home is insufficient to allow the installation of a proper sized covered porch. He stated that because the house is one foot from the rear portion of the BRL, there are only 26 feet between the rear edge of the house and the rear property line. Because the setback is 15 feet, only an 11-foot-deep covered porch can be added without a variance.

He stated that other homes in the neighborhood either have deeper yards or have more space between the rear line of the BRL allowing deeper additions. He stated that since the

property abutting theirs is County open space, the variance will not adversely affect the rear property owner.

*The criteria set forth in Section 130.B.2.a (1) are 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.

Since the property abutting theirs is County open space, the variance will not adversely affect the rear property owner. Other properties in the neighborhood have similar additions that protrude in varying amounts from the rears of the houses. This variance will not cause an alteration of the existing character.

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

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

The hardships and practical difficulties were not self-created. The lots were created by subdivision and the placement of the homes by site development.

*The Petitioner has met the criteria of Section 130.B.2.a(3).*

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

The requested variance is the minimum variance necessary to afford relief. Mr. Chon stated that a covered porch is necessary to allow them to enjoy part of their backyard area during the hottest parts of the day, because the sun exposure during a portion of the day is intense. He stated that an additional 3 feet of covering (beyond the allowed 10 feet) will be sufficient and is the minimum necessary to afford relief.

*Within the intent and purpose of the regulations, then, the requested variance is 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 **3rd day of January 2024** by the Howard County  
Hearing Examiner:

**ORDERED**, that the request for a variance from Section 107.0.D.4.d(1)(c) of the Howard County Zoning Regulations (“HCZR”) for a Residential Variance to reduce the 25' setback (15' with the 10' allowed encroachment) to 13' to accommodate a single family dwelling with a covered porch located in the R-ED-MXD-3 (Residential: Environmental Development/Mixed Use) Zoning District on that land belonging to Jae Chon, in accordance with the exhibits accompanying the Petition filed September 8, 2023, shall be and hereby is **GRANTED**.

**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.