

IN THE MATTER OF : BEFORE THE
TIMMY MARTINS : HOWARD COUNTY
Petitioner : HEARING EXAMINER
 : Case No. BA-24-012V

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DECISION AND ORDER

On September 10, 2024, the undersigned, serving as the Howard County Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of TIMMY MARTINS, Petitioner, for a variance from Section 108.0.D.4.c.(1)(b) of the Zoning Regulations to reduce the required 10-foot side setback to 6.1 feet for an existing garage.

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. Timmy Martins testified in support. No one testified in opposition to the Petition.

FINDINGS OF FACT

A. Property. The subject property is identified as Tax Map 46, Parcel 152 and addressed as 10688 Harding Road (the "Property"). The Property is 0.99-acre and is zoned R-20 (Residential - Single). The adjoining properties to the east, south and north are zoned R-20 and developed with single family detached dwelling units. The Property is located in Council District 4 and Election District 6. To the west is an unimproved lot owned by The Washington Sanitary Commission, which is zoned R-20 (Residential).

B. Variance Requested. This is a petition for variance from Section 108.0.D.4.c.(1)(b)8(c)(ii) of the Zoning Regulations to reduce the required 10-foot side setback to 6.1 feet for an existing garage.

C. Prior Zoning Decision.

In BA 15-011V, the Hearing Examiner granted a variance request for the same detached garage to reduce the 10-foot setback to seven (7) feet. In or around 2019, when the Petitioner sought a permit to build an addition, it was determined that the existing garage actually encroached into the reduced 7-foot setback area such that the garage is 6 feet 1 inch from the lot line. Thus, an additional variance of 11 inches is necessary so that the setback will be reduced to 6 feet 1 inch.

D. Testimony.

Timmy Martins, the Petitioner, testified that when the 2015 variance decision was reached, the plans submitted showed that the garage was seven (7) feet from the lot line. He stated that the measurement at the time was made from an iron pin that had been in middle of a tree that had grown around the pin. More recent measurements show that the garage is actually 6 feet and 1 inch from the lot line. (See the variance plan - House Location Drawing dated November 2017.) He also stated that the shed mentioned in the 2015 decision has been removed. Prior sheds on the Property were the subject of code enforcement actions and were removed before the 2015 variance case was heard by the Hearing Examiner.

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

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, I find that 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).

As did the Hearing Examiner in the 2015 case, I find that the 9.99-acre Property is long and narrow -- 100 feet wide and between 430 and 434 feet deep, approximately. The Property is generally smaller than many of the nearby and adjoining rectangular shaped parcels, and the uniqueness causes practical difficulties in complying strictly with the setback regulations.

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.

The 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 – that is, the long and narrowly shaped lot -- were not self-created.

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

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

The variance requested is for an additional 11 inches from the previously granted variance.

Within the intent and purpose of the regulations, then, I find 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 **9th day of October 2024**, by the Howard County Hearing Examiner:

ORDERED, the request for a variance from Section 108.0.D.4.c.(1)(b) of the Zoning Regulations to reduce the required 7-foot side setback to 6.1 feet for an existing garage is **GRANTED**.

Provided, however, that:

1. The variance shall apply only to garage structure and use as described in the petition as depicted on the variance plan (House Location Drawing dated November 2017) and not to any other activities, uses, structures, or additions on the Property;

2. The Petitioner shall obtain all required permits, including all retroactive permits;
3. Any building permit application or plan shall depict the 6.1-foot setback from the side lot line and the location and square footage of the detached garage, as shown on the variance petition; and
4. As set forth in the 2015 Decision and Order, BA 15-011V, the detached garage shall not be used for a home occupation use, for dog grooming, for a contractor use, for a business use, or for a commercial or retail operation, unless and until applicable zoning approvals are obtained.

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.