

IN THE MATTER OF : BEFORE THE
Arthur Sorak : HOWARD COUNTY
Petitioner : HEARING EXAMINER
 : Case No. BA-24-004V
:.....

DECISION AND ORDER

On April 2, 2025, the undersigned, serving as the Howard County Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Arthur Sorak, Petitioner, for a variance from Section 108.0.D.4.c(1)(b) to reduce the required 10-foot side setback to 0 feet, and variance from Section 108.0.D.4.c(1)(c)(ii) to reduce the required 10-foot rear setback to 0 feet for an existing retaining wall at the property known as 10226 Shirley Meadow Court.

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 and appeared and testified in support. No one appeared in opposition.

FINDINGS OF FACT

A. Property. The 0.46-acre property is zoned R-20 (Residential – Single). Adjoining properties are zoned R-20. The properties to the north, east and south are developed with single family detached dwellings. To the west is Shirley Meadow Court.

B. Variance Requested. The Petition is for residential variances to reduce the required 10-foot side setback to 0 feet and reduce the required 10-foot rear setback to 0 feet for an existing retaining wall.

C. Testimony.

Arthur Sorak explained that the prior retaining wall was deteriorating and needed to be replaced. The original wall was installed when the development was built. Constructing a new retaining wall with a 10-foot setback would overlap portions of the existing structure, including the deck, and would be located within 6 feet of the corner of the residence. Eliminating the retaining wall and instead restoring the original slope would likely lead to water drainage problems around the foundation of the existing home. The new segmented block retaining wall replaced, in the same location, a failed timber retaining wall that was installed by the original developer. He stated that the slope in the rear of the home necessitates a retaining wall, and that the home was built on a diagonal withing the BRL, leaving virtually no area between the rear of the house and the BRL. Placing the retaining wall within the setback would require significant grading and would place the wall within 6 feet of the corner of the home.

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 variances meet the criteria necessary for the granting of variances 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 Petitioner states that because the home was built on a diagonal within the BRL, leaving virtually no area between the rear of the house and the BRL. I find that property is unusual or different from the nature of the surrounding properties and disproportionately affects the subject property.

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

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

I find that the requested variances, if granted, will not alter the essential character of the neighborhood or district in which the lot is located and will not substantially impair the appropriate use or development of adjacent property. The wall has been there since the development of the land.

The variances allowed meet 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 resulting from the fact that the house is on a diagonal withing the BRL was not self-created.

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

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

The requested variances are the minimum variance necessary to afford relief.

Within the intent and purpose of the regulations, then, I find the reduced variances allowed by this order are 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 **2nd May 2025**, by the Howard County Hearing Examiner:

ORDERED, for a variance from Section 108.0.D.4.c(1)(b) to reduce the required 10-foot side setback to 0 feet, and variance from Section 108.0.D.4.c(1)(c)(ii) to reduce the required 10-foot rear setback to 0 feet for an existing retaining wall at the property known as 10226 Shirley Meadow Court are hereby **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.