

**IN THE MATTER OF  
BETH GUNTER  
PETITIONER**

**\* BEFORE THE DIRECTOR OF  
\* DEPARTMENT OF PLANNING & ZONING  
\* CASE NO. AA-22-010  
\* 12265 FREDERICK ROAD**

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**DECISION AND ORDER**

On August 19, 2022, the Designee for the Director of the Department of Planning and Zoning conducted a public hearing to consider the petition of Beth Gunter, for an Administrative Adjustment from Section 105.0.E.4.a(3)(b) to reduce the required side setback for principal structures from 30 feet to 26.5 feet for the construction of a deck at 12265 Frederick Road (“the Property”), as authorized under the Administrative Adjustment Procedure, Section 100.0.F.1. The notice of the hearing was posted on the Property in accordance with all applicable regulations. Ms. Gunter presented testimony. No one testified in opposition to the petition.

Prior to the introduction of testimony, the following items were incorporated into the record by reference:

1. The Howard County Zoning Regulations.
2. The Subdivision and Land Development Regulations.
3. The Administrative Procedures Act of the Howard County Code.

During the hearing, the following items were introduced as exhibits:

1. Administrative Adjustment Petition and Plans submitted by the Petitioner.
2. Aerial photograph ‘Exhibit A’.

Mr. Tyler provided a brief report on the Property and the Administrative Adjustment request. Ms. Gunter concurred with the report and submitted a recent aerial photograph of the Property during the hearing. She indicated that the picture demonstrates how the surrounding vegetation will block the view of the proposed deck from surrounding properties. Mr. Tyler accepted the exhibit and recorded it as ‘Exhibit A.’ Ms. Gunter asserted that the sloping topography, orientation/location of the house, narrow width of the lot, and building restriction lines necessitate the Administrative Adjustment, as these factors reduce the available area for the deck.

She stated that the deck will be a significant distance from any adjacent residences, and will neither impair the development of any adjacent property, nor be determinantal to the public welfare. She explained that she has lived at the Property since 1995 and the existing constraints on the Property were not created by her. She asserted that this request is the minimum relief necessary due to the constraints of the existing conditions on the Property.

Based upon the testimony and exhibits presented at the hearing, and the plans and materials submitted by the Petitioner as part of the petition, the Director makes the following Findings of Fact and Conclusions of Law:

#### **FINDINGS OF FACT**

1. The Petitioner, Beth Gunter, is the owner of the Property, which is located on the south side of Frederick Road, approximately 150 feet southeast of the intersection of Frederick Road and Fox Meadow Lane. The Property is identified as Tax Map 15, Parcel 39 and is addressed 12265 Frederick Road. The Property is 3.929-acres and is zoned RR-DEO (Rural Residential – Density Exchange Option).
2. The lot was created through the recordation of Plat 5850 on June 27, 1984.
3. The Property contains a single story detached dwelling built in 1994.
4. The lot descends from an elevation of 543 feet along the west property line to 516 feet along the east property line.
5. The lot narrows from a width of 267 feet along Frederick Road to 208 feet where the house is located.
6. The house was constructed parallel to the side lot lines, thereby orienting the rear of the house along the 30-foot side setback.
7. Section 128.0.A of the Howard County Zoning Regulations allows decks to encroach 10 feet in the front or rear setback, but not into side setbacks.
8. According the Maryland Department of Assessment and Taxation and the Petitioner's testimony, the Petitioner purchased the Property in 1995.
9. Principal structures in the RR zoning district are required to be setback 30 feet from the side lot lines. The Petitioner proposes to construct a 558 square foot (31 feet by 18 feet) deck along the rear of the structure. A corner of the deck encroach encroaches three and one half (3.5) feet into the 30-foot side setback.
10. All adjoining properties are zoned RR-DEO and contain single family detached dwellings.

#### **CONCLUSIONS OF LAW**

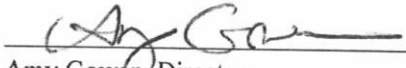
Based upon the foregoing Findings of Fact, the Director makes the following Conclusions of Law:

1. The sloping topography, orientation/location of the house, narrow lot width, and irregular lot shape are unique physical conditions that result in practical difficulties in complying with the 30-foot side setback.

2. The requested adjustment is approximately 3.5 feet into the 30-foot side setback and is unlikely to be discernable from adjacent residences due to the existing vegetation, distance, orientation of the house, and sloping topography. Therefore, the encroachment is unlikely to alter the essential character of the area, impair the use or development of the adjacent property, or be detrimental to the public welfare.
3. The practical difficulties related to the orientation/location of the house, narrow lot width, irregular lot shape and sloping topography were not created by the Petitioner, who purchased the Property in 1995.
4. The orientation/location of the house, narrow lot width, irregular lot shape and sloping topography result in practical difficulties in complying with the required 30-foot side setback. The requested adjustment is 11.67% of the 30-foot setback, which does not exceed the 20% maximum allowed. Therefore, the adjustment is the minimum necessary to afford relief within the intent and purpose of the zoning regulations.

#### ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 16<sup>th</sup> day of September, 2022 by the Director of the Department of Planning and Zoning for Howard County, ORDERED that the petition of Beth Gunter, for an Administrative Adjustment from Section 105.0.E.4.a(3)(b) to reduce the required side setback for principal structures from 30 feet to 26.5 feet for a deck, be and the same is hereby **APPROVED**.

  
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Amy Gowan, Director  
Department of Planning and Zoning

Prepared By:

  
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Justin Tyler, Director's Designee  
Department of Planning and Zoning

Notice: A person aggrieved by this decision may appeal it to the Howard County Hearing Authority 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 Hearing Authority. The person filing the appeal will bear the expense of providing notice and advertising the hearing.