

IN THE MATTER OF	:	BEFORE THE
<b>DAVID WANG</b>	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 15-001V

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**DECISION AND ORDER**

On April 6, 2015, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of David Wang for a variance to reduce the side setback from an arterial or collector public street right-of-way (ROW) from 30 feet to about 15 feet for a detached garage in an R-12 (Residential: Single) Zoning District, filed pursuant to Section 130.0.B.2 of the Howard County Zoning Regulations.

Petitioner certified to compliance with the advertising and posting requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure. Petitioner was not represented by counsel. David Wang testified in support of the petition. No one appeared in opposition to the petition.

**FINDINGS OF FACT**

Based upon the evidence presented at the hearing, the Hearing Examiner finds as follows:

1. Property Identification. The subject property is located in the 5<sup>th</sup> Election District about 250' south of the terminus of Syracuse Court. It is identified as Tax Map 34, Grid 12, Parcel 37, Lot 3 and known as 6127 Syracuse Court (the Property).

2. Property Description. The 0.35-acre pipestem Property is improved with a two-story frame dwelling fronting on the northwesterly lot line. Access is provided from a pipestem

driveway off Syracuse Court. The Property is atypically subject to a 30' setback from the Guilford Road ROW.

3. Vicinal Properties. All vicinal properties are zoned R-12. The properties to the north, northwest and east are each improved with a single-family detached dwelling. To the south is Guilford Road. There is no access to Guilford Road from Syracuse Court. The Hearing Examiner observed a large detached garage directly across the pipestem driveway during her site visit.

4. The Variance Request (§ 119.0.D.4.a.(1)(a)). Petitioner proposes to construct an approximately 16'(w) x 22'(d) detached garage on the southwest side of the dwelling. Because the proposed garage would encroach 15' into the 30' side setback from an arterial or collector public street ROW, Petitioner is requesting a reduction in the setback to 15'.

### CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.0.B.2.a of the Regulations. Pursuant to this section, the Hearing Examiner may grant a variance only if the Petitioner demonstrates compliance with all four variance criteria. Based upon the foregoing Findings of Fact, and for the reasons stated below, the Hearing Examiner finds the requested variance complies with Section 130.0.B.2.a.(1) through (4), and therefore may be granted.

**(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.**

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 130.0.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. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. *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*).

In this case, the Property's is atypically burdened by the 30' arterial or collector public street setback, which reduces the buildable area. This condition causes practical difficulty in complying with the setback, in accordance with Section 130.0.B.2.a.(1).

**(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.**

The proposed detached garage would be located on the side of the Property next to the Guilford Road ROW. There is a much larger detached garage across the pipestem driveway. There is no evidence that the variance would alter the essential character of the neighborhood or district, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare, in compliance with Section 130.0.B.2.a.(2).

**(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.**

Petitioner did not create the practical difficulties, in compliance with Section 130.0.B.2.a.(3).

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

The proposed variance is related to a reasonable use of the Property, a modest detached garage, in compliance with Section 130.0.B.2.a.(4).

**ORDER**

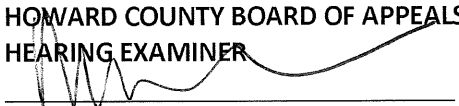
Based upon the foregoing, it is this **13<sup>th</sup> Day of April 2015**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of David Wang for a variance to reduce the side setback from an arterial or collector public street right-of-way (ROW) from 30 feet to approximately 15 feet for a detached garage in an R-12 (Residential: Single) Zoning District, is **GRANTED**;

**Provided, however, that:**

1. The variance shall apply only to the uses and structures as described in the petition as depicted on the Variance Plan and not to any other activities, uses, structures, or additions on the Property.
2. The Petitioner shall obtain all required permits.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

  
Michele L. LeFaivre

Date Mailed: \_\_\_\_\_

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 calendar 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.