

IN THE MATTER OF : BEFORE THE  
SHIFU LI : HOWARD COUNTY  
Petitioner : BOARD OF APPEALS  
 : HEARING EXAMINER  
 : BA Case No. 11-020V

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**DECISION AND ORDER**

On August 1, 2011, 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 Shifu Li for a variance to reduce the required 20-foot structure setback to 9.2 feet for a deck in an R-12 (Residential: Single) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to compliance with the notice and posting requirement of the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Shifu Li 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, I find as follows:

1. Property Identification. The subject property is located on the southwest corner of the Highland Avenue intersection with Beechfield Avenue. The subject property is officially identified as Tax Map 38, Block 13, Parcel 873, Lot 557 and the address is 6730 Beechfield Avenue (the Property).

2. Property Description. The 0.07-acre, long and narrow Property is 25 feet wide and 100 feet deep. It is improved with a semi-detached, single-family dwelling sited 20 from the front lot line, about 30 feet from the rear lot line, and about 7.5 feet from the side lot line.

1. Adjacent Properties. The R-12 zoned properties on the same side of Beechfield Avenue are improved with single-family semi-detached dwellings. The properties on the other side of Beechfield Avenue are generally improved with single-family detached dwellings. The properties to the rear are currently unimproved.

2. The Variance Request. The Petitioner is proposing to construct a 12 by 14-foot deck about three-four in height for a rear deck. Because the deck would encroach into the 20-foot rear structure setback, the Petitioner is seeking a variance to reduce the setback to 9.2 feet.

### CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made. Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.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.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. 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).

In this case, there is no dispute that the end lot is small and narrow. In fact, the 25' wide by 120' deep lot is a substandard lot because it is less than the minimum 12,000 square foot minimum lot size and 60-foot lot width required in the R-12 zone. Consequently, I conclude the small size of the lot and its narrowness are unique physical conditions causing the Petitioner practical difficulty in complying with the setback requirements, in accordance with Section 130.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 deck will be used for a permitted purpose and is a reasonable size. The variance, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.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.**

The practical difficulty in complying strictly with the setback regulation arises from the shape of the lot and was not created by the Petitioner, in accordance with Section 130.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 deck is a reasonable size. Within the intent and purpose of the regulations, then, the variance is the minimum necessary to afford relief, in accordance with Section 130.B.2.a.(4).

**ORDER**

Based upon the foregoing, it is this 8<sup>th</sup> Day of August 2011, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the variance petition of Shifu Li to reduce the required 20-foot structure setback to 9.5 feet for a deck 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 submitted and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**



\_\_\_\_\_  
Michele L. LeFaivre

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

8/9/11

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.