

IN THE MATTER OF	:	BEFORE THE
Permits By Gabriele	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 25-017V

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DECISION AND ORDER

On November 18, 2025, 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 Permits By Gabriele (Petitioner) for a variance to reduce the minimum structure and use rear yard setback, from 30 feet to 14 feet (a deck is permitted to encroach 10 feet into the rear yard setback as a matter of right), a variance of 6 ft, for a replacement deck, in Council District 1, Tax Map 31, Grid 20, Parcel 801, Lot 125, also identified as 5203 New Prospect Court, Ellicott City, Maryland, in the R-20 (Residential: Single) Zoning District, filed pursuant to § 130.0.B.2 of the Howard County Zoning Regulations (the HCZR) for a variance from § 108.0.D.4.c.(1).(c).(i)..

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

Hearing Examiner Rules of Procedure. Permits By Gabriele (Petitioner), represented by Gabriele Council appeared in support of the Petition. No one appeared in opposition.

FINDINGS OF FACT

Based upon the evidence of record, the Hearing Examiner finds as follows:

1. Property Identification and Description. The approximately .3-acre property is located on the southwest intersection of New Prospect Court and Rising Sun Lane, south of MD 103 (Montgomery Road) and north of MD 100. The subject Property lies in Council District 1, is identified as Tax Map 31, Grid 20, Parcel 801, Lot 125, is in the Montgomery Meadows subdivision and is known as 5203 New Prospect Court, Ellicott City, Maryland (the Property). The Property is developed with a single-family detached dwelling and is in a development of similar dwellings and lot sizes. The Property is an irregular polygon shape which has five (5) sides and is a corner lot. Due to the shape of the lot, and because it is a corner lot, the single-family dwelling is sited diagonally opposite to the intersection of New Prospect Court and Rising Sun Lane. Due to the irregular shape of the lot, the dwelling is sited to the rear of the Property and a corner of the existing deck encroaches 6 feet into the rear yard setback.

2. Vicinal Properties. Adjoining properties are zoned R-20 and are developed with single-family detached dwellings.

3. Agency Comments. There are no agency or department comments in opposition to the proposed variance request.

4. The Requested Variance. Petitioner is requesting a variance to reduce the minimum structure and use rear yard setback for a structure, from 30 feet to 14 feet, a variance of 16 feet, for a 504 sq ft replacement deck. Section 128.0.A.1.e allows decks and porches to encroach 10 feet into the rear setback, effectively reducing the 30-foot rear setback to 20 feet for a deck. The proposed deck is an in-kind replacement utilizing the identical footprint. The existing deck is 504 sq ft and the proposed deck is 504 sq ft at the identical location. The existing deck has rotted and is a health hazard necessitating its replacement.

CONCLUSIONS OF LAW

The standards of variances are contained in HCZR § 130.0.B.2.a. 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 § 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.**

Compliance with the first criterion is a two-part test. 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).

As shown on the Variance Exhibit, the Property is an irregular polygon shaped lot having five (5) sides and is a corner lot. As a result of the Property's shape and corner lot location, the dwelling is sited diagonally to the street intersections resulting in larger front and side yard setbacks and a smaller rear yard setback, being located close to the building restriction line. The existing deck which is being replaced as it is a health hazard which currently encroaches 6 feet into the rear yard setback. These existing physical constraints cause the Property Owners practical difficulty in complying with the current bulk area requirements for the minimum structure and use rear yard setback for structures, of 30 feet, in accordance with §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 Property is an interior corner lot located in a developed detached single-family dwelling subdivision. The proposed replacement deck will not alter the character of the existing neighborhood. The requested variance will not alter the essential character of the neighborhood and will not adversely impact the appropriate use and development of adjacent properties as they have already been developed. The proposal to construct a replacement deck will not be detrimental to public welfare as it will not produce excessive noise, odors, dust, fumes, vibrations, or other adverse effects that would negatively impact vicinal properties. Indeed, the replacement deck will actually be a benefit as the existing deck has rotted and is a threat to health, safety and welfare.

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 § 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.

The practical difficulty and hardship in complying strictly with the bulk regulations requiring a 30-foot rear yard structure and use setback arises from the 5-sided irregularly shaped polygon lot, which is a corner lot, and the resulting siting of the dwelling close to the 30-ft rear yard building restriction line, which render the replacement of the exiting deck impractical at its current location. The history of the location of the existing deck with its encroachment into the rear yard setback is unknown. These circumstances were not created by the Property Owners, in accordance with §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 variance sought, a reduction of 6 feet from the minimum structure and use rear yard setback for structures, is the minimum decrease necessary to permit the reasonable construction and use of a replacement 504 sq ft deck. Within the intent and purpose of the regulations, this variance is the minimum necessary to afford relief, in accordance with §130.0.B.2.a.(4).

(5) That no variance be granted to the minimum criteria established in Section 131.0 or 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.

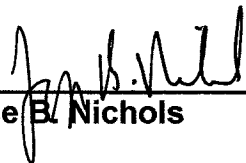
The Subject Property is not located in a Historic District.

ORDER

Based upon the foregoing, it is this 19th day of November, 2025, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of Permits By Gabriele for a variance to decrease the minimum rear yard structure and use setback for a structure, from 30 feet to 14 feet, a variance of 6 feet when taking into account Section 128.0.A.1.e which allows decks and porches to encroach 10 feet into the rear setback, effectively reducing the 30-foot rear setback to 20 feet for a deck, in order to construct a 504 sq ft replacement deck, in Council District 1, Tax Map 31, Grid 20, Parcel 801, Lot 125, also identified as 5203 New Prospect Court, Ellicott City, Maryland, in the R-20 (Residential: Single) Zoning District, be and is hereby **GRANTED.**

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Joyce B. Nichols

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.