

IN THE MATTER OF	:	BEFORE THE
John Lynn	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 25-027V

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DECISION AND ORDER

On April 28, 2026, 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 John Lynn (Petitioner) for a variance to reduce the minimum structure and use rear yard setback for a structure, from 25 feet to 7 feet, a variance of 18 ft, (a deck is permitted to encroach 10 feet into the rear yard setback as a matter of right), for an existing deck, in Council District 4, Tax Map 45, Grid 2, Parcel 113, Lot 148, also identified as 11168 Eugene Avenue, Fulton, Maryland, in the R-ED-MXD-3 (Residential: Environmental Development – Mixed Use) Zoning District, filed pursuant to § 130.0.B.2 of the Howard County Zoning Regulations (the HCZR) for a variance from § 107.0.D.4.d.1.(c)..

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. John Lynn (Petitioner) 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 0.169-acre property is located on the west side of Eugene Avenue, south of Scaggsville Road (Md 216), west of Md 29 and north of the Rocky Gorge Reservoir. The subject Property lies in Council District 4, is identified as Tax Map 45, Grid 2, Parcel 113, Lot 148, and is known as 11168 Eugene Avenue, Fulton, 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 quadrilateral shape, having four sides of different lengths. The topography of the Property slopes downward from the front of the Property towards the rear which is adjacent to a drainage swale which is also adjacent to open space owned by the Homeowners Association. The side property lines adjoin similar sized lots developed with attached dwellings.

2. Vicinal Properties. The surrounding properties are also in the R-ED-MXD-3 Zoning District and are developed with single-family detached homes.

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 25 feet to 7 feet, a variance of 18 feet, for an existing deck. Section 128.0.A.1.e allows decks and porches to encroach 10 feet into the rear setback, effectively reducing the 25-foot rear setback to 15 feet for a deck. The deck is designed to be architecturally compatible with the existing dwelling and with existing homes.

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 quadrilateral shape, having four sides of different lengths. The topography of the Property slopes downward from the front of the Property towards the rear which is adjacent to a drainage swale which is also adjacent to open space owned by the Homeowners Association. The side property lines adjoin similar sized lots developed with attached dwellings. As a result of the Property's shape, the dwelling, by necessity, is sited close to the rear yard building restriction lines, and the existing deck extends beyond the allowable rear yard setback. The house location, the lot shape, and the sloping topography cause the Petitioner practical difficulty in complying with the current bulk area requirements for the minimum structure and use rear yard setback for structures, of 25 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 lot located in a developed detached single-family dwelling subdivision. Petitioner obtained approval from the HOA and obtained signatures from the adjacent homeowners and the home across Eugene Road. These are the only homes which can view the deck. Petitioner hired a contractor who, due to an administrative mix-up, failed to obtain the required County permits unbeknownst to Petitioner. The builder has since constructed similar decks in this neighborhood. Petitioner was not aware of the permit issue until he received a violation notice posted on his front door. Petitioner has worked diligently with the Department of Planning and Zoning to rectify the permit issue, the first step of which is to obtain the instant variance. The existing deck does 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 legalize the existing 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 deck is actually a benefit as an improvement to the subject Property.

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 25-foot rear yard structure and use setback arises from the Property's irregular quadrilateral shape, having four sides of different length, and the topography of the Property sloping downward from the front of the Property towards the rear which is adjacent to a drainage swale which is also adjacent to open space owned by the Homeowners Association. Both of these circumstances result in very little rear yard outside of the building restriction line. 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 18 feet from the minimum structure and use rear yard setback for structures, is the minimum decrease necessary to legalize the existing 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.

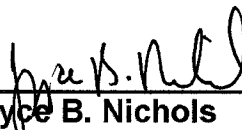
The Subject Property is not located in a Historic District.

ORDER

Based upon the foregoing, it is this 29th day of April, 2026, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of John Lynn for a variance to decrease the minimum rear yard structure and use setback for a structure, from 25 feet to 7 feet, a variance of 18 feet, a variance of 8 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 25-foot rear setback to 15 feet for a deck, in order to legalize an existing deck, in Council District 4, Tax Map 45, Grid 2, Parcel 113, Lot 148, also identified as 11168 Eugene Road, Fulton, Maryland, in the R-ED-MXD-3 (Residential: Environmental Development – Mixed Use) 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.