

STANDARD APPLICATION

RECEIVED

Case No. 5506

**Harford County  
Board of Appeals**

Bel Air, Maryland 21014

JUL 27 2005

Date Filed 7/19/05

Hearing Date \_\_\_\_\_

Receipt \_\_\_\_\_

Fee \$450.00

HARFORD COUNTY COUNCIL

Shaded Areas for Office Use Only

**Type of Application**

- Administrative Decision/Interpretation
- Special Exception
- Use Variance
- Change/Extension of Non-Conforming Use
- Minor Area Variance
- Area Variance
- Variance from Requirements of the Code
- Zoning Map/Drafting Correction

**Nature of Request and Section(s) of Code**

CASE 5506 MAP 56 TYPE Variance

ELECTION DISTRICT 01 LOCATION 303 Regal Drive

BY Thomas G. Brennan, 1402 Halkirk Way, Bel Air

Appealed because a variance pursuant to Sec. 267-26C (5)(b) and Sec. 267-26C (6) of the Harford County Code to allow a residential detached accessory structure to remain within a recorded easement and less than 1 foot from the rear yard lot line in the R3 district requires approval by the Board.

**NOTE:** A pre-conference is required for property within the NRD/Critical Area or requests for an Integrated Community Shopping Center, a Planned Residential Development, mobile home park and Special Exceptions.

**Applicant/Owner (please print or type)**

Name Thomas G. Brennan Phone Number (410) 838-0287

Address 1402 Halkirk Way, Bel Air, MD 21015-5782  
Street Number Street City State Zip Code

Co-Applicant \_\_\_\_\_ Phone Number \_\_\_\_\_

Address \_\_\_\_\_  
Street Number Street City State Zip Code

Contract Purchaser \_\_\_\_\_ Phone Number \_\_\_\_\_

Address \_\_\_\_\_  
Street Number Street City State Zip Code

Attorney/Representative Lawrence F. Kreis, Jr., Esquire Phone Number (410) 879-2222

Address Stark and Keenan, P.A., 30 Office Street, Bel Air, MD 21014  
Street Number Street City State Zip Code

**Land Description**

Address and Location of Property 303 Regal Drive, Abingdon, Maryland 21009

Subdivision Broadview Lot Number 4

Acreage/Lot Size 17,859.00 SF Election District 01 Zoning R3

Tax Map No. 56 Grid No. 3F Parcel 523 Water/Sewer: Private \_\_\_\_\_ Public X

List ALL structures on property and current use: Single Family Home and shed with deck and walkway

Estimated time required to present case: 1 hour

If this Appeal is in reference to a Building Permit, state number Result of Notice of Construction Without  
Would approval of this petition violate the covenants and restrictions for your property? No Permit

Is this property located within the County's Chesapeake Bay Critical Area? Yes \_\_\_\_\_ No X

If so, what is the Critical Area Land Use designations: \_\_\_\_\_

Is this request the result of a zoning enforcement investigation? Yes \_\_\_\_\_ No X

Is this request within one (1) mile of any incorporated town limits? Yes \_\_\_\_\_ No X

**Request**

See Attached  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Justification**

See Attached  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*If additional space is needed, attach sheet to application. In answering the above questions, please refer to the Requirements that pertain to the type of approval request. (Special Exception, Variance, Critical Area or Natural Resource District (NRD) Variance, etc.)*

## REQUESTS AND JUSTIFICATIONS

303 Regal Drive

Request No. 1: A variance from Section 267-26(C)(5)(b) of the Harford County Zoning Code to allow a residential detached accessory structure to remain within a recorded easement and less than 1 foot from the rear yard lot line.

Justification No. 1: In 1992, the property owner, Thomas Brennan, hired a contractor to build shed and deck with walkway on his property. On October 11, 2004, he received a letter from Charles L. Kurschner, from the Harford County Department of Inspections, Licenses and Permits indicating that the contractor had failed to obtain the necessary building permits for the deck and shed. When Mr. Brennan went to Harford County to try and get the permits issued, he was required to produce a survey of his property. The 1994 survey shows that the shed and deck are constructed partially within a 15 foot drainage and utility easement and partially within 3 feet of the rear yard lot line thus necessitating this variance request. Due to the uniqueness of the property and its topographical conditions, including the steep sloping backyard with the utility easement along the rear property line, the literal enforcement of the Code would result in practical difficulty or unreasonable hardship. Granting this variance will not be substantially detrimental to adjacent properties nor will it materially impair the purpose of this Code or the public interest. Attached hereto is a November 19, 2004 Memorandum from Cheryl Banigan at the Department of Public Works to Tess Cunzeman at the Department of Planning and Zoning indicating that after a site visit it was determined that the shed and deck do not appear to contribute to any drainage problems. Therefore, the deck and shed could remain in the easement subject to two conditions: (1) they not be placed on a permanent foundation; and (2) if it is shown that either structure contributes to any drainage problems in the future, the structures must be moved out of the easement at the owner's expense.

Request No. 2: A variance from Section 267-26(C)(6) to allow an accessory structure other than a fence (i.e., shed and deck with walkway) to be located within a recorded drainage and utility easement.

Justification No. 2: In 1992, the property owner, Thomas Brennan, hired a contractor to build a shed and deck with walkway on his property. On October 11, 2004, he received a letter from Charles L. Kurschner, from the Harford County Department of Inspections, Licenses and Permits indicating that the contractor had failed to obtain the necessary building permits for the deck and shed. When Mr. Brennan went to Harford County to try and get the permits issued, he was required to produce a survey of his property. The 1994 survey shows that the shed and deck are constructed partially within a 15 foot drainage and utility easement and partially within 3 feet of the

rear yard lot line thus necessitating this variance request. Due to the uniqueness of the property and its topographical conditions, including the steep sloping backyard with the utility easement along the rear property line, the literal enforcement of the Code would result in practical difficulty or unreasonable hardship. Granting this variance will not be substantially detrimental to adjacent properties nor will it materially impair the purpose of this Code or the public interest. Attached hereto is a November 19, 2004 Memorandum from Cheryl Banigan at the Department of Public Works to Tess Cunzeman at the Department of Planning and Zoning indicating that after a site visit it was determined that the shed and deck do not appear to contribute to any drainage problems. Therefore, the deck and shed could remain in the easement subject to two conditions: (1) they not be placed on a permanent foundation; and (2) if it is shown that either structure contributes to any drainage problems in the future, the structures must be moved out of the easement at the owner's expense.

# RAPID MEMO


TO TESS CONZEMAN  
PLANNING & ZONING

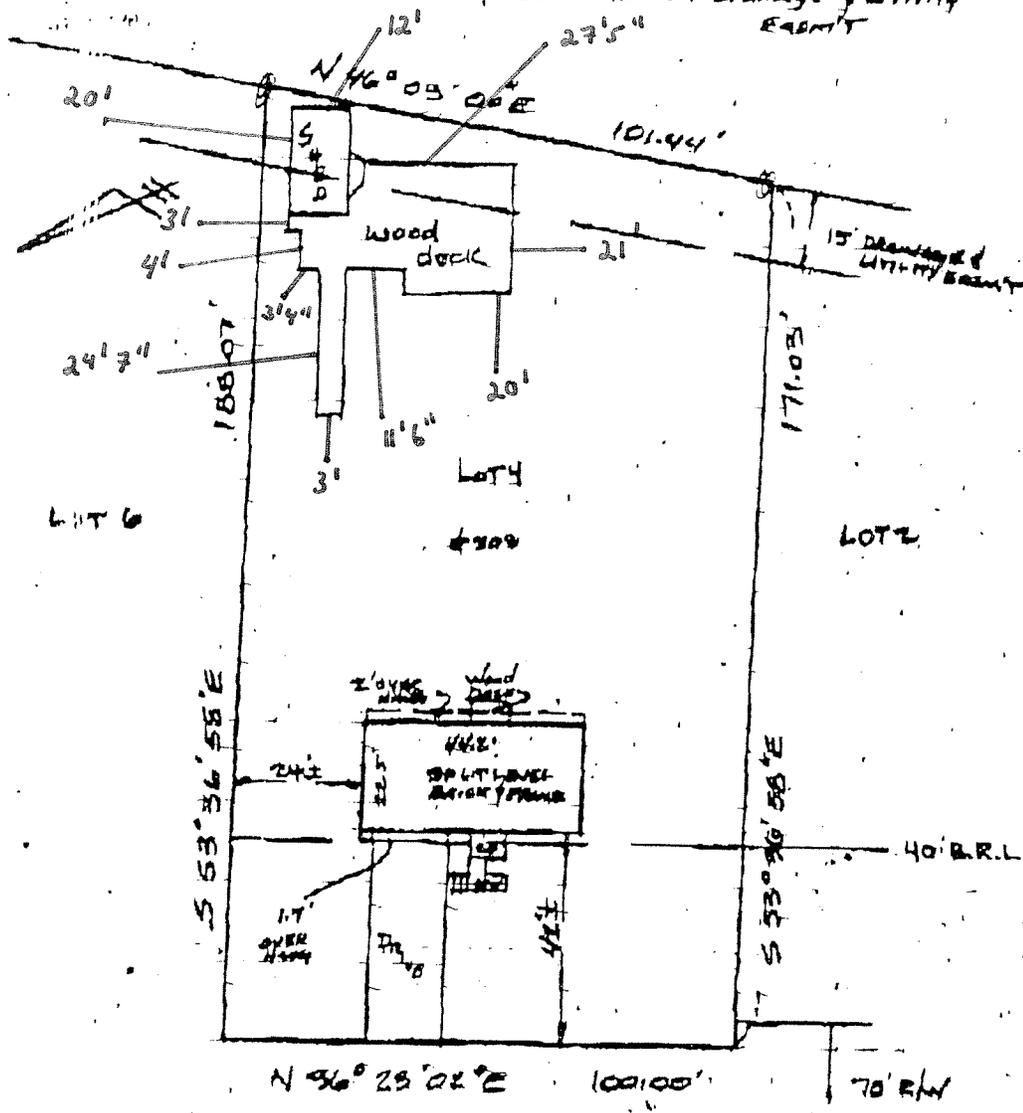
DATE 11/19/04  
SUBJECT 303 REGAL DR - SHED &  
DECK IN EASEMENT

AFTER A SITE VISIT, IT WAS DETERMINED THAT THE LOCATION OF THE SHED AND DECK IN THE DRAINAGE & UTILITY EASEMENT DOES NOT APPEAR TO CONTRIBUTE TO ANY DRAINAGE PROBLEMS. THEREFORE, THE DECK AND SHED COULD REMAIN IN THE EASEMENT SUBJECT TO THE FOLLOWING CONDITIONS:

- THE DECK AND SHED SHALL NOT BE PLACED ON A PERMANENT FOUNDATION
- IF IT IS SHOWN THAT EITHER STRUCTURE CONTRIBUTES TO ANY DRAINAGE PROBLEMS IN THE FUTURE, THE STRUCTURES MUST BE MOVED OUT OF THE EASEMENT AT THE OWNERS EXPENSE.

CHERYL BANIGAN, DPM  
ENGINEERING

\* NOTE: PORTIONS OF SHED & DECK LIE IN DRAINAGE & UTILITY EASEMENT



REGAL DRIVE  
Lot 4



THE LOT SHOWN HEREON IS IN FLOOD ZONE C PER F.E.M.A. FLOOD INSURANCE RATE MAP PANEL # 2400010 C12110 THIS IS TO CERTIFY THAT THE IMPROVEMENTS INDICATED HEREON ARE LOCATED AS SHOWN. THIS IS NOT A PROPERTY LINE SURVEY AND SHOULD NOT BE USED AS SUCH.

# CSR Surveys

2705 White Avenue  
Baltimore, Maryland 21214  
(410) 444-1180  
Fax: (410) 426-6058

LOCATION CERTIFICATION  
#808 REGAL DRIVE  
LACK REVISIONS OF PLAT A & B  
"BROADVIEW" P.B. 42/12  
1ST FLOOR DECK, WOODS CO. MD.  
DATE: 3-14-94 SCALE: 1" = 30' FILE: 94-080  
J.C. WING

DAVID R. CRAIG  
HARFORD COUNTY EXECUTIVE

LORRAINE COSTELLO  
DIRECTOR OF ADMINISTRATION



C. PETE GUTWALD  
DIRECTOR OF PLANNING & ZONING

## HARFORD COUNTY GOVERNMENT

### Department of Planning and Zoning

June 8, 2006

#### STAFF REPORT

#### **BOARD OF APPEALS CASE No. 5506**

APPLICANT/OWNER: Thomas G. Brennan  
1402 Halkirk Way, Bel Air, Maryland 21015-5782

REPRESENTATIVE: Lawrence F. Kreis, Jr., Esquire  
Stark and Keenan, P.A.  
30 Office Street, Bel Air, Maryland 21014

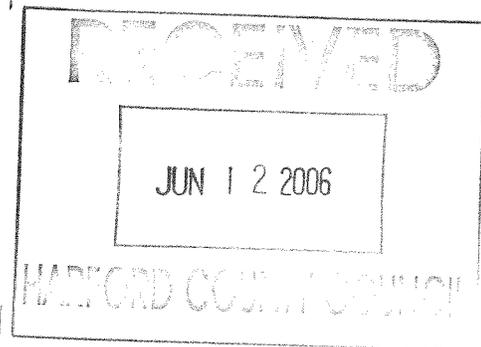
LOCATION: 303 Regal Drive, Abingdon, Maryland 21009  
Development of Broadview  
Tax Map: 56 / Grid: 3F / Parcel: 523 / Lot: 4  
Election District: First (1)

ACREAGE: 17,859± square feet  
0.410± of an acre

ZONING: R3/Urban Residential District

DATE FILED: July 19, 2005

HEARING DATE: September 26, 2005 (original hearing date)  
June 21, 2006



#### **APPLICANT'S REQUEST and JUSTIFICATION:**

See ATTACHMENT 1.

#### **CODE REQUIREMENTS:**

*Preserving Harford's past; promoting Harford's future*

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Thomas Brennan

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“The Applicants are requesting a variance pursuant to Section 267-26C(5)(b) and Section 267-26C(6) of the Harford County Code to allow a residential detached accessory structure to remain within a recorded easement and less than 1 foot from the rear yard lot line in the R3/urban Residential District.”

Since the original request the Applicants have had the property re-surveyed and discovered that the accessory structure sits approximately 3 feet on the adjacent property. In a letter dated April 7, 2006 from the Applicant’s Attorney, they state that they are aware of the encroachment and if the variance is granted the Applicant would agree to remove the portion of the structure which encroaches over the rear property line. Due to the topography of the lot it is not possible to remove the entire structure from the drainage and utility easement. A copy of the letter and revised boundary survey is enclosed with the report (Attachment 2 and 3).

Section 267-26C(5)(b) of the Harford County Code reads:

*(b) Residential detached accessory structure: six (6) feet from any principal structure and three (3) feet from side or rear yard lot lines except for lots with recorded easements. For lots with recorded easements, the setback shall be equal to the width of the recorded easement.*

Section 267-26C(6) of the Harford County Code reads:

*No accessory use or structure, except fences, shall be located within any recorded easement area.*

**LAND USE and ZONING ANALYSIS:**

Land Use – Master Plan:

The Applicant’s property is located on the southeast side of Regal Drive, just northeast of Laurel Bush Road, in the development of Broadview. The lot backs up to the new development of Millstone. A location map, a copy of the Broadview plat and a copy of the Millstone plat are enclosed (Attachments 4, 5 and 6).

The subject property is located within the Development Envelope. The predominant land use designations are Low, Medium and High Intensities. The Natural Features Map reflects Parks, stream systems and areas of Sensitive Species Project Review Areas. The subject property is designated as Low Intensity, which is defined by the 2004 Master Plan as:

**Low Intensity** – Areas within the Development Envelope where residential development is the primary land use. Density ranges from 1.0 to 3.5 dwelling units per acre. Neighborhood commercial uses such as convenience stores, doctors' offices, and banks are example of some of the nonresidential uses associated with this designation.

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Enclosed with the report are copies of portions of the 2004 Land Use Map and the Natural Features Map (Attachments 7 and 8).

### Land Use – Existing:

The existing land uses in this area of the County conform to the overall intent of the 2004 Master Plan. The predominant land use in the immediate area is residential. Residential uses include single-family dwellings, townhouses, garden apartments and condominiums. Commercial uses include individual retail and shopping centers. The topography of the area ranges from rolling to steep especially near the stream valleys. A topography map and a copy of the aerial photograph are enclosed with the report (Attachments 9 and 10).

The subject property is a single-family lot, located in the development of Broadview. It is situated on the southeast side of Regal Drive, two lots in from Laurel Bush Road. The lot is basically rectangular in shape and approximately 17,859 square feet in size. Improvements consist of a single-family brick and frame bi-level dwelling, double wide concrete driveway and a small wooden landing with stairs on the rear of the dwelling to access the upper level. Located in the left rear corner of the lot is a frame shed with terraced decking. Access to the accessory structure is by way of a wooden ramp with railings. The topography of the lot is rolling to steep. From a point approximately 10-feet to the rear of the dwelling the lot slopes sharply down. The lot contains large mature trees and shrubbery.

The land to the rear of the subject property has recently been developed (Millstone). The area immediately adjoining the subject property was wooded, however, this area has been cleared to develop the project and create the necessary storm drain facility (2000 aerial photograph – Attachment 11). Since the trees have been removed the shed and decking are visible. The one corner of the shed is approximately 3 on the adjoining property. Enclosed with the report are site photographs taken approximately August of 2005 (Attachment 12). Updated photographs were taken on June 7 of 2006 (Attachment 13), along with an enlargement of the aerial photograph (Attachment 14).

### Zoning:

The zoning classifications in the area are consistent with the 2004 Master Plan as well as the existing land uses. Residential zoning ranges from R1 to R3 Urban Residential Districts. Commercial zoning includes B1/Neighborhood Business, B2/Community Business and B3/General Business Districts. The subject property is zoned R3/Urban Residential District as shown on the enclosed copy of the zoning map (Attachment 15).

### **SUMMARY:**

The Applicants are requesting a variance pursuant to Section 267-26C(5)(b) and Section 267-26C(6) of the Harford County Code to allow a residential detached accessory structure to remain

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within a recorded easement and less than 1 foot from the rear yard lot line in the R3/Urban Residential District.

Variations of this nature may be approved by the Board of Appeals pursuant to Section 267-11 of the Harford County Code, provided it finds by reason of the uniqueness of the property or topographical conditions that literal enforcement of the Code would result in practical difficulty and undue hardship. Further, the applicant must show that the request will not be substantially detrimental to adjacent properties or will not materially impair the purpose of the Code or the public interest.

The original site plan showed the existing accessory structure within the 15 drainage and utility easement and 1 foot from the property line. There were discrepancies on the original site plan and it was requested that a new site plan be prepared. The new site plan dated October 28, 2005 shows a corner of the existing accessory building extending into the adjacent property. The Applicant has stated that if the request is approved that he will remove the portion of the building that is on the adjacent property. This would require at least 4 foot of the building be removed to meet the 1 foot setback proposed.

The Department of Public Works were requested to provide comments. In a memo dated November 19, 2004, they determined after a site inspection that the location of the accessory structures do not appear to contribute to any drainage problems. They further state that the deck and shed shall not be placed on a permanent foundation and if it is shown that either structure contributes to any drainage problems in the future, the structures must be moved out of the easement at the owner's expense. A copy of the memo is enclosed with the report (Attachment 16).

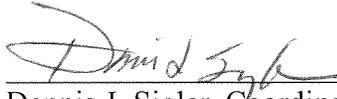
The Department finds that there is not adequate justification to support the requested variances. The topography is not unique to this lot. Many of the lots in this development contain steep slopes. The existing shed would have to be relocated or altered since it encroaches onto the adjacent property. There appears to be other areas on the lot which could accommodate a reasonable size shed.

A second site inspection was conducted on June 7, 2006 in order to complete the staff report. It was observed at that time that the posting which was done on May 22, 2006 (Attachment 17) had been removed.

**RECOMMENDATION and or SUGGESTED CONDITIONS:**

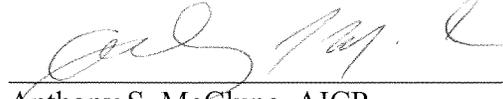
The Department of Planning and Zoning recommends that the requested variance be denied.

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Thomas Brennan  
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Dennis J. Sigler, Coordinator  
Zoning & Board of Appeals Review



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Anthony S. McClune, AICP  
Deputy Director, Planning and Zoning

DJS/ASM/jf