

**BOARD OF APPEALS CASE NO. 4818**

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**BEFORE THE**

**APPLICANT: Charles Scheuerman**

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**ZONING HEARING EXAMINER**

**REQUEST: Enlargement of a non-conforming building in the B3 District; 2800 Belair Road, Fallston**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 2/17/99 & 2/24/99**

**HEARING DATE: April 21, 1999**

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**Record: 2/19/99 & 2/26/99**

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**ZONING HEARING EXAMINER'S DECISION**

The Applicant, Charles Scheuerman, is requesting an enlargement or extension of a non-conforming building, pursuant to Section 267-21 of the Harford County Code, and a variance from Section 267-39(B), Table XII, to reduce the required 35 foot rear yard setback in a B3 District.

The subject property is located at 2800 Belair Road in the Third Election District. The parcel is identified as Parcel No. 72, in Grid 4-C, on Tax Map 55. The parcel contains .991 acres more or less, all of which is zoned B3/FP. The subject parcel is owned by Robert Scheuerman.

Mr. Charles Scheuerman testified that he leases a one-story frame building on the subject parcel, from which he runs a business known as Fast Eddie's Pit Beef. He said that there is also a gun and pawn shop operating on the property and that the parcel has 458 feet of frontage on Belair Road. The Applicant testified that the property has an irregular shape, with extensive frontage on U.S. Route 1, and that its depth ranges from 30 feet to 102 feet. The Applicant said that he determined, based on discussions with the Department of Planning and Zoning, that the property contains non-conforming structures, including the structure in which the pit beef stand is operated. The Applicant said that a previous owner had operated a motel on the parcel.

## **Case No. 4818 - Charles Scheuerman**

**Mr. Scheuerman said that he has operated the pit beef stand on the parcel for a number of years and that he recently placed picnic tables on the property for the convenience of his customers so that they would be able to eat from a table as opposed to eating in their vehicles or standing on the parking lot. The witness said that when the Health Department became aware that there were picnic tables on the parcel, they advised the Applicant that he needed to install a restroom on the site to be used by his customers.**

**The Applicant said that in further discussions with the Harford County Department of Planning and Zoning he was advised that since the building was non-conforming, it would be necessary for him to request an expansion of a non-conforming structure and also a variance from the rear yard setback since the proposed location for the restroom was within the required 35 foot rear yard setback. The witness said if he complies with the required 35 foot rear yard setback, the restroom would be constructed in the middle of the parking lot, which would be impractical.**

**The Applicant testified that he secured a permit for the pit beef business and he stated that granting of the approval for the restroom would not intensify the non-conforming structure, but would be merely for the convenience of his customers and to comply with the Health Department requirement. He said the expansion would not exceed 50% of the existing gross square footage of the existing pit beef stand since the proposed restroom would only be 6 feet by 8 feet, for a total of 48 square feet. He went on to testify that the enlargement would not violate the height or coverage regulations for the B3 District and that granting the expansion for the non-conforming structure and variance would not adversely effect adjacent properties, since the property to the rear is wooded and the request would not impact existing traffic on U.S. Route 1. Mr. Scheuerman went on to explain that granting the variance would not have a detrimental impact on the community and indicated that there is public water and sewer on the site.**

## **Case No. 4818 - Charles Scheuerman**

**Mr. Anthony S. McClune, Chief of Current Planning for the Department of Planning and Zoning, appeared and testified that he participated in the preparation of the Staff Report, which was labeled, "Petitioner's Exhibit No. 2". Mr. McClune testified that the Staff was of the opinion that the expansion of the non-conforming use should be granted, as well as the variance to reduce the rear yard setback. Mr. McClune stated that approval of the expansion and variance would not have a detrimental impact on the community and that the Applicant's request complies with the requirements set forth in Section 267-21 of the Zoning Code.**

**No protestants testified in opposition to the Applicant's request, although Albert J. A. Young, Esquire, did appear on behalf of an adjoining property owner and argued that the Applicant did not prove that the property was unique and that the sewer line which services the subject property is partially on his client's property.**

### **CONCLUSION:**

**The Applicant is requesting an enlargement or extension of a non-conforming structure, pursuant to Section 267-21 of the Harford County Code. That Section provides:**

**"The Board may authorize the extension or enlargement of a non-conforming use, with or without conditions, provided that:**

- A. The proposed extension or enlargement does not change to a less-restricted and more-intense use.**
- B. The enlargement or extension does not exceed fifty percent (50%) of the gross square footage in use at the time of the creation of the non-conformity.**
- C. The enlargement or extension does not violate the height or coverage regulations for the district.**
- D. The enlargement or extension would not adversely affect adjacent properties, traffic patterns, or the surrounding neighborhood.**
- E. The limitations, guides and standards set forth in Section 267-9(I), Limitations, Guides and Standards, are considered by the Board."**

**The Applicant is also requesting a variance to Section 267-39(B), Table XII, to reduce the required 35 foot rear yard setback to 2 feet.**

**The evidence introduced by the Applicant and corroborated by Anthony McClune was**

## **Case No. 4818 - Charles Scheuerman**

that the proposed extension or enlargement will not change the use to a less restrictive or more intense use, that the addition of 6 feet by 8 feet for a restroom will not exceed 50% of the gross square footage in use at the time of the creation of the non-conformity, that the enlargement or extension does not exceed the height or coverage regulation for the district and that the enlargement or extension will not adversely effect adjacent properties, traffic patterns, or surrounding neighborhood.

Likewise, no evidence was introduced to indicate that the Applicant's request will adversely impact the "Limitations, Guides and Standards" set forth in Section 267-9(I). The uncontradicted evidence produced by the Applicant and Mr. McClune also indicates the subject property is irregular in shape, has approximately 450 feet of frontage on Belair Road, with only an average depth of 66 feet.

It is, therefore, the finding of the Hearing Examiner that the subject parcel is unique because of its unusual shape and exceptional narrowness. It should be noted that the Applicant is requesting the extension to satisfy a request by the Health Department to install a restroom since the Applicant has placed picnic tables around the pit beef stand. The use is permitted on the parcel; however, because the Applicant wishes to expand his stand by adding the restroom, it is necessary for the Applicant to comply with Section 267-21. The Applicant could construct the restroom elsewhere on the parcel, but to do so would require the restroom to be constructed in an area which would cause an unnecessary hardship for the Applicant.

An adjoining property owner did appear by Counsel, but did not call witnesses. The adjoining property owner's Counsel argued that the Applicant had failed to show that the subject property is unique and that a portion of the sewer line serving the subject property is a few feet on the Applicant's parcel. However, no evidence was introduced to show how long the sewer line had been on the property, who placed the sewer line there, etc.

It is the finding of the Hearing Examiner that the Applicant has complied with the conditions set forth in Section 267-21 for an extension of the non-conforming use and, further, that the subject property is unique due to its exceptional narrowness, and that denial of the variance to reduce the rear yard setback would result in unnecessary hardship.

With respect to the sewer line, the record is completely devoid of any evidence that the Applicant had anything to do with placement of the sewer line. It is the finding of the Hearing

**Case No. 4818 - Charles Scheuerman**

Examiner that the zoning process is not the correct forum to resolve the sewer line encroachment issue. These matters must be dealt with in the law courts.

It is the recommendation of the Hearing Examiner that the requested relief be granted for the extension of the non-conforming structure to construct a restroom and the variance to the required setback be approved, subject to the following conditions:

1. The Applicant shall submit Floodplain Elevation Certification.
2. The Applicant shall obtain all necessary permits and inspections for the addition.
3. The setbacks shall not be further reduced.

Date           **JUNE 21, 1999**

**L. A. Hinderhofer  
Zoning Hearing Examiner**