

**BOARD OF APPEALS CASE NO. 5036**

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**BEFORE THE**

**APPLICANT: Jonathan Lingo**

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**ZONING HEARING EXAMINER**

**REQUEST: Variance to allow an existing dwelling and deck within the required rear yard setback; 463 Deerhill Circle, Abingdon**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 4/5/00 & 4/12/00**

**HEARING DATE: May 31, 2000**

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**Record: 4/7/00 & 4/14/00**

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**ZONING HEARING EXAMINER'S DECISION**

The Applicant, Jonathan Lingo, is requesting a variance to Sections 267-36B, Table VI, and 267-23C(1)(a)(6) of the Harford County Code, to allow an existing dwelling within the required forty (40) foot rear yard setback (34 foot setback existing) and a variance to allow construction of a deck within the required thirty (30) foot rear yard setback (22 feet proposed) in an R2/COS Urban Residential Conventional with Open Space Development District.

The property is located at 463 Deerhill Circle, Abingdon, in the First Election District. The parcel is more specifically identified as Parcel No. 646, Lot 184, in Grid 1D, on Tax Map 61. The property contains approximately .045 acres, all of which is zoned R2/COS Urban Residential Conventional with Open Space Development, utilizing a NRD Natural Resource District development adjustment option which allows the design criteria for an R3 Urban Residential District to apply.

The subject property is part of a townhouse development known as Constant Friendship II. At the time that the builder of the development submitted applications for permits, the site plan contained an error showing the townhouse lots to have a depth of 110 feet, when, in fact, the lots were only 100 feet deep. Consequently, the subject property, as well as five (5) other properties are the subject of variance requests to allow existing or proposed decks and, as in this case, the townhouse itself, to be located within the required rear setbacks for this district. These six cases (Board of Appeals Case Numbers 5032, 5033, 5034, 5035, 5036 and 5037) were consolidated for hearing.

## **Case No. 5036 - Jonathan Lingo**

**Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, was the first to appear and testify, and he explained the circumstances which led to the filing of the six requests. According to Mr. McClune, all six properties will require variances to Sections 267-36B, Table VI, and 267-23C(1)(a)(6) of the Harford County Code in order to construct or maintain decks or additions on the rear of the townhouses which have been built on the subject lots. All of the parcels are located in Deerhill Circle in the townhouse development known as Constant Friendship. Mr. McClune explained that, although the properties are located in an R2 Urban Residential District, the townhouses were built under the Conventional with Open Space (COS) design and are located in a Natural Resource District (NRD). This allows them to utilize the design and setback requirements applicable to the R3 District, rather than the R2. According to Mr. McClune, at the time that the builder submitted the plats for permits for construction, the lots were erroneously listed as having a depth of 110 feet. The lots are actually only 100 feet deep. As a result, in order for the property owners to construct decks (or maintain the decks already built by the builder), they must have a variance which will allow them to encroach into the required rear yard setback on each of the lots. While a forty (40) foot setback is applicable to the townhouse itself, Section 267-23C(1)(a)(6) of the Code will allow a deck to encroach into 25 percent of the required setback, leaving a thirty (30) foot required rear setback for the proposed deck.**

**It was Mr. McClune's testimony that the subject lots and the circumstances relating to construction on the lots are unique. The topography of each lot slopes downward to the rear, with large areas of open space behind the lots that slopes up from a stream which runs behind all of the townhouse units. According to Mr. McClune, the townhouses were placed on the lots well back from the minimum front yard setback line, reducing the available buildable area to the rear of the properties. If the lots had actually been 110 feet deep as noted on the plats, or if the townhouses had been built closer to the minimum front yard setback, there would be no need for the variances because decks could have been constructed without encroaching on the 40 foot minimum rear yard setback.**

## **Case No. 5036 - Jonathan Lingo**

Also, these six lots are unique compared to the other townhouse lots within the development because all of the other lots have depths of at least 110 feet, as planned. Platting errors and site design for these six lots, together with the topographic features, are the unique circumstances which have led to the need for these requests.

In addition, Mr. McClune testified that there would be no adverse impact to adjoining properties or to the Code if the variance requests were granted. All six of the lots back up to a Natural Resource District, not to other homes. Therefore, the relatively small encroachment into the rear yard setback will have no negative impact to any other property owners. If the variances are not granted, Mr. McClune noted, these six property owners will effectively be penalized in that they will be unable to improve their homes and lots with decks and other typical additions, unlike other townhouse owners in the development. Their homes will not be valued as highly and they will be unable to reap the same enjoyment from their backyards as the other property owners in the area. As a result of all these factors, the Department of Planning and Zoning is recommending that the variance requests be approved.

The Applicant's wife and representative, Kristina Lingo, appeared and testified in support of all six requests, including her husband's request for a variance which would not only allow construction of the proposed deck within the required rear yard setback, but to allow their existing townhouse to encroach within the rear yard setback as well. She indicated that her home was actually built within the required forty (40) foot rear setback, a fact unbeknownst to her and her husband at the time that they purchased the property. She indicated that if her request is denied and she cannot construct a deck, the resale value of her property will be reduced and she will be unable to enjoy her rear yard. She was also concerned about potential problems with the title if she and her husband were to attempt to sell the home in the future. She did not believe there would be any negative impact to adjoining properties if the variance requests were granted.

## **Case No. 5036 - Jonathan Lingo**

**Mr. Edwin Mengel, 455 Deerhill Circle, a fellow applicant, appeared and testified in support of all of the requests. Mr. Mengel testified that he has lived at his property for two years and is the original owner. At the time that he purchased his townhouse, the rear deck had already been constructed on the property by the builder. According to Mr. Mengel, the original plans for the deck called for a 10 by 16 foot deck, which would not have encroached on the rear yard setback. However, as an option, the builder provided a 12 by 20 foot deck, which left a rear setback of only 28 feet, rather than the required 30 feet. It was Mr. Mengel's testimony that denial of his variance request would cause him significant hardship and difficulty in that he would have to cut off part of his deck, which might interfere with its structural integrity, and it would interfere with his ability to enjoy his yard and enhance his property value. He was not aware of any opposition to his or the Applicant's request from any adjoining property owners or other neighbors.**

**Ms. Shirley Bennie, 457 Deerhill Circle, testified in support of this and the other five requests, indicating that she has owned her home for two years and that her deck was already built onto her townhouse at the time of purchase. She is proposing to build a sunroom and additional decking on her property, which will require a variance from the above-referenced sections of the Code. She indicated that other townhouses in the development have sunrooms and decks and she would like the opportunity to enjoy the same. She indicated that denial of her variance request would cause her hardship and difficulty in that she would have to reduce her existing deck and there would be no room available for steps leading to the rear yard. She was not aware of any opposition to her or the Applicant's request.**

**Ms. Maryann Porter, 459 Deerhill Circle, appeared and testified that she has owned her townhouse for approximately 22 months. She is seeking a similar variance to that proposed by the other five property owners. Ms. Porter indicated that if her variance request is denied, she will be forced to have a deck which is smaller than the other decks in the development, and her enjoyment of her property would be reduced. She also indicated that without the ability to construct steps from the deck to the yard, she has no way to access the rear yard from the first level of the house. She supports the other property owners requests and is not aware of any opposition.**

**Mr. Charles Hax, 461 Deerhill Circle, appeared and testified in support of his and the**

## **Case No. 5036 - Jonathan Lingo**

other five variance requests. He is also seeking a variance not only to allow a deck within the required rear yard setback, but also to allow his existing townhouse to encroach within the setback. Currently, his home is apparently only 37.5 feet from the rear boundary, rather than the required 40 feet. He also is proposing to build a 16 by 10 foot deck, which would be consistent with the other decks already existing on adjoining properties. Mr. Hax indicated that it will be difficult to sell his home without approval of the variance, and if the deck is smaller than the proposed size, it will be too small to enjoy. Mr. Hax testified that he is not aware of any opposition to his or the other requests and he does not believe there would be any negative impact to adjoining properties if the requests were granted.

Mr. Joseph Hughes, 465 Deerhill Circle, was the final property owner and applicant to testify. Mr. Hughes supports this and the other requests and is also seeking a variance for his property, to include his townhouse and the existing deck. His home and deck were also constructed within the required setback. According to Mr. Hughes, if the variance is denied, he will have to cut off a portion of his deck and a portion of his home, a result which would cause him great hardship. He is not aware of any negative impact which would result if the requests were granted.

There were no witnesses who testified in opposition to any of the requests.

### **CONCLUSION:**

The Applicant, Jonathan Lingo, along with five other adjoining property owners, is requesting a variance to Sections 267-36B, Table VI and 267-23C(1)(a)(6) of the Harford County Code, to allow his existing townhouse to be located six (6) feet within the required forty (40) foot rear yard setback (34 feet existing), and to allow construction of a deck to be located eight (8) feet within the required thirty (30) foot rear yard setback, leaving an existing setback of twenty-two (22) feet in an R2/COS District.

## **Case No. 5036 - Jonathan Lingo**

**Section 267-23C(1)(a)(6) states:**

**“Encroachment.**

**(a) The following structures shall be allowed to encroach into the minimum yard requirements, not to exceed the following dimensions:**

**(6) Unenclosed patios and decks: up to, but not to exceed, twenty-five percent (25%) of the side or rear yard requirement for the district. No accessory structure shall be located within any recorded easement area.”**

The setback requirements for the principal residential structure, and those applicable here, are set forth in Section 267-36B, referencing the applicable Tables V and VI. In this case, as well as the other five adjoining, Table VI is applicable because the development is located next to an NRD District with wetlands, which allows design requirements for the next highest density district to be utilized. Accordingly, the required rear yard setback is 40 feet for the townhouse, with the allowable setback for a deck to be reduced to 30 feet. Section 267-11A of the Code provides that variances may be granted if:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.**
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”**

The uncontradicted evidence offered by the Applicant’s wife and representative, the adjoining property owners and the Department of Planning and Zoning demonstrates that the circumstances relating to the subject property and the five adjoining lots are unique. Unlike the other townhouse lots in the development, these lots were erroneously platted as having a depth of 110 feet when, in fact, their depth is only 100 feet. The townhouses on the lots have been placed well back from the minimum front yard setback, and in this case has actually been constructed within the rear yard setback. These factors, coupled with the topography of the lot, which slopes down to a stream and wetlands, severely limits the buildable area in the rear yard.

**Case No. 5036 - Jonathan Lingo**

There was no evidence to suggest that the location of the existing townhouse or of the proposed deck is substantially detrimental to adjacent properties: to the contrary, the adjacent properties are similarly situated in that they are all in need of the same variance in order to allow decks and additions of consistent size and design to be constructed or maintained on the properties. Approval of the variance would not appear to impair the purpose of the Code, in fact it conforms to the intent of the Code in allowing more flexible design requirements in the COS development and would make these townhouses more consistent with the other townhouses in the area. Likewise, approval of the variance requests would not impair the public interest in any way.

Therefore, it is the recommendation of the Hearing Examiner that the Applicant's request to allow an existing townhouse to be located within the required rear yard setback by six (6) feet (34 feet from the property line) and construction of a deck eight (8) feet within the required rear yard setback (22 feet proposed) be approved, on the condition that the Applicant obtain any necessary permits and inspections, and submit a final plan or drawing for the proposed deck.

Date JULY 31, 2000

Valerie H. Twanmoh  
Zoning Hearing Examiner