

**BOARD OF APPEALS CASE NO. 5115**

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**BEFORE THE**

**APPLICANT: Kevin Dolinar**

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**ZONING HEARING EXAMINER**

**REQUEST: Variance to construct an addition within the required 40 foot side yard setback; 4256-C Federal Hill Road, Street**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 12/20/00 & 12/27/00**

**Record: 12/22/00 & 12/29/00**

**HEARING DATE: January 31, 2001**

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**ZONING HEARING EXAMINER'S DECISION**

The Applicant, Kevin Dolinar, is seeking a variance pursuant to Section 267-34, Table II, of the Harford County Code, to construct an addition within the required 40 foot side yard setback (23 feet proposed) in an AG/Agricultural District.

The subject property is located at 4256-C Federal Hill Road, Street, Maryland 21154 and is more particularly identified on Tax Map 16, Grid 3C, Parcel 168, Lot 3. The parcel consists of 3.35 acres, more or less, is zoned AG/Agricultural, and is entirely within the Fourth Election District.

Mr. Kevin Dolinar appeared and testified that he is the owner of the subject parcel. He first indicated that the spelling of his name in the case file was incorrect. The Hearing Examiner corrected the spelling on the record to D-O-L-I-N-A-R and not Delinaz as indicated in the case file. The Applicant stated that he owns a two story house and wishes to add a two story, two car garage to the existing structure. The Applicant described his property as topographically unique for several reasons. The parcel is shaped somewhat like a pentagon and approximately one-third of the acreage is constrained by the presence of the Transcontinental Gas Pipeline. Another approximate one-third of the total acreage is constrained by the septic reserve area. Consequently, the house was placed to the very side of the parcel leaving little distance between the house and the property lines.

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The witness stated that his proposed garage will not be unlike other garages located in Harford County and in the immediate area of his home. There will be a single story breezeway area between the existing home and the garage. The breezeway area will be used as a mudroom/utility room. The upper level of the garage will be converted to living space, either as a bedroom or an office. The garage will use materials similar in color and appearance to the existing house. The Applicant did not feel that his addition would be detrimental to adjacent or other neighboring properties.

Mr. Anthony McClune testified on behalf of the Department of Planning and Zoning (P&Z). P&Z recommends approval of the request finding that the property, "...contains a unique configuration. Also, because of the Transcontinental Gas Pipeline Corporation right-of-way and the location of the septic reserve area, the buildable area of the lot is very constrained. The proposed location of the addition and garage appears to be the most practical alternative. Based on the location of the dwellings on the adjacent lots, the request should not have an adverse impact on these lots or the intent of the Code."

Mr. Donald Nuetzel appeared and testified that he lives adjacent to the subject property and that he was in opposition to the subject request. Mr. Nuetzel testified that he thinks all property owners should abide by the published zoning code and that, in his opinion, no variances or exceptions should be made. Mr. Nuetzel has a garage on his house but feels that the addition of a garage by his neighbor will result in a safety hazard - he thinks the area where cars enter the garage will be too close to his property and may pose a safety hazard for his children. He also thinks his view will be interrupted if a two-story garage is built at the proposed location. Fundamentally, however, the witness felt strongly that variances of this nature should simply never be granted. Mr. Nuetzel also thought the resale value of his home would be adversely impacted but offered no expert testimony or other evidence that this was the case.

Mrs. Gene Nuetzel also opposed the application for the same reasons as her husband. Neither she nor her husband offered any rebuttal testimony regarding the unique topographical constraints imposed on the subject parcel.

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### **CONCLUSION:**

The Applicant is seeking a variance pursuant to Section 267-34, Table II of the Harford County Code to construct a garage within the 40 foot setback requirement (23 feet proposed).

Variances of this nature are permitted by Harford County Code Section 267-11, which provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (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 Maryland Court of Special Appeals has provided guidance in matters of variance requests and described a two step analysis in determining whether such requests should be granted. According to the guidance provided by the Court, the variance process is a two step sequential process:

1. The first step requires a finding that the property whereon structures are to be placed(or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.
2. The second step is a demonstration whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property's uniqueness exists." Cromwell v. Ward, 102 Md. App. 691 (1995).

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In the instant case, there is no question that the subject property is uniquely constrained by the presence of the Transcontinental Gas Pipeline right-of-way and the large septic reserve which pushed the location of the house into the corner of the parcel. The proposed addition is a garage not unlike those commonly found in Harford County and in this neighborhood. Based on the buildable area left to the Applicant, there is no area of his property other than that proposed where such an addition could reasonably be located, Thus, a denial of the variance would impose the unreasonable hardship that this Applicant could not construct a garage on his property, a right commonly enjoyed by property owners in Harford County, including the protesting parties in this case.

Variances of this nature are generally granted once a finding of topographic uniqueness is made and there is a further finding that no material adverse impact will result. Despite the protestations of adjoining neighbors, this garage will have no greater impact than any other garage. The houses in this neighborhood are on large lots and are separated by significant distances compared to many other neighborhoods. Despite the encroachment proposed by Applicant, the distance between the garage and the protesting neighbors house will still far exceed the minimum requirements of the Harford County Code. The protestants expressed a safety concern because of the location of the area that will be in front of the garage where cars will need to turn. This area will be on the Applicant's property and should pose no reasonable or foreseeable safety hazard to persons on the protesting party's property.

For the reasons stated herein, the Hearing Examiner recommends approval of the subject request subject to the condition that the Applicant obtain any and all necessary permits and inspections.

Date     **MARCH 12, 2001**

**William F. Casey**  
**Zoning Hearing Examiner**