

BOARD OF APPEALS CASE NO. 5128	*	BEFORE THE
APPLICANT: Michael & Karen Vance	*	ZONING HEARING EXAMINER
REQUEST: Variance to construct an addition within the required rear yard setback; 353 Point-to-Point Road, Bel Air	*	OF HARFORD COUNTY
HEARING DATE: April 30, 2001	*	Hearing Advertised
		Aegis: 3/21/01 & 3/28/01
		Record: 3/23/01 & 3/30/01
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ZONING HEARING EXAMINER'S DECISION

The Applicants, Michael and Karen Vance, are requesting a variance pursuant to Section 267-36B, Table V, of the Harford County Code, to construct an addition within the required 35 foot rear yard setback (proposed 27 foot) in an R2/COS District.

The subject property is located at 353 Point to Point Road, in the Hunter's Run subdivision and is more particularly identified on Tax Map 56, Grid 2-E, Parcel 352, Lot 159. The parcel consists of 0.172± acres, is presently zoned R2/Urban Residential/Conventional with open space (R2/COS), and is entirely within the First Election District.

Mr. Donald Lynch appeared on behalf of the Applicants and indicated that he was the contractor hired to construct an addition to the rear of the house. There is a deck presently located at the rear of the home and the deck will become an enclosed family room. The addition will be approximately 15 feet by 30 feet, and underneath the proposed addition will become storage with two access doors from the rear into the rear yard. There is no access to the basement from the underneath storage. Construction type will be cinder-block at the same level as the first floor of the home, with wood frame, roof shingles and siding to match the existing home. Mr. Lynch indicated that when the house was originally built, it was placed approximately 7 to 8 feet behind the front yard setback line. This has reduced significantly the amount of rear yard available for any type of construction. He indicated that there has been an existing deck since the house was built and that the enclosure proposed by the Applicants will not be any larger than the existing deck and, in fact, will be enclosed, which in the opinion of the witness, should reduce any noise emanating from the deck area that might irritate or annoy any adjoining neighbors.

Mr. Lynch went on to say that had the house been placed at the front yard setback line as other home in the neighborhood have been, there would be no need for this variance and

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the that the variance being requested is only 8 feet. In the opinion of the witness, there will be no adverse impact from the variance requested, nor will there be any adverse impacts associated with the addition of the enclosed family room. The witness did not think there would be any detrimental impact resulting at all from this requested application if it were approved and indicated further that a number of the neighbors had signed their consent, which were placed in the file.

Mr. Lynch concluded by stating that the property was unique in that the house had been placed further to the rear than it should have been at the time of construction, thereby almost mandating that any future additions, decks, patios or family rooms existing to the rear of the house or proposed at a later date after construction would require a variance.

Mr. Anthony McClune appeared on behalf of the Department of Planning and Zoning and indicated that he was the current Manager, Division of Land Use Management for the Department . Mr. McClune indicated that he was familiar with the subject property and that his office had conducted a thorough investigation of the request and had set forth their findings and recommendations in the Department's Staff Report dated April 13, 2001, which was included with the file. The Department of Planning and Zoning, after its investigation, concludes that the addition requested will, in fact, encroach into the rear yard setback by approximately 8 feet. The Code requires a 35 foot setback and the proposal will result in a 27 foot setback. Mr. McClune also indicated that the proposed location of the addition appears to be the only practical location for this structure. The witness also indicated that the dwelling located to the rear of the subject property is approximately 100 feet away and there are mature trees between the two dwellings. Mr. McClune felt that this property was unique in that the house was setback beyond the front yard setback line into an area that would require that any future additions obtain a variance from the rear yard setback requirements. The Department recommends approval of the Applicants' request, subject only to the Applicants' obtaining all necessary permits and inspections.

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Mrs. Cynthia Dietz appeared in opposition to this request and testified that she and her husband, Dennis, live directly behind the Applicants' property and that her house is approximately 100 feet from the subject property. The witness indicated that when she and her husband were seeking a location for their home, they wanted a home that had some distance between them and any houses to the rear of them. The witness understands that 35 foot setbacks are allowed, but does believe that any encroachment into that setback should not be permitted at all. The witness indicated that she feared noise from the addition would interrupt her enjoyment of her property and also felt that any lighting that might appear outside could have an adverse impact on her property. Upon questioning by the Hearing Examiner, both Mr. and Mrs. Dietz were asked whether their objections to this addition would be negated if the Applicants were required to plant an evergreen screen to the rear of their property, which would further screen this addition from their property. Both Mr. and Mrs. Dietz indicated that they would find such a screening requirement acceptable and that their objections would be alleviated if that requirement was, in fact, imposed.

CONCLUSION:

The Harford County Code, pursuant to Section 267-36B, Table V, requires a 35 foot rear yard setback in an R2/COS District. The Applicants are requesting a variance to that Section and seeks a 27 foot setback or an 8 foot variance.

Harford County Code Section 267-11 permits variances and 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."

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The Hearing Examiner finds that the property has topographic uniqueness in that the house was set back further behind the front yard setback line than is normally required or expected in this neighborhood and the surrounding properties. As a result of this misplacement by the original builder, the rear yard building envelope has been significantly diminished such that any addition that anyone would require on this home would, in fact, require a variance of some nature. There is a substantial amount of distance between the Applicants' home and the home that would be most impacted by any addition to the rear of the Applicants' home, the Dietz's home; however, mature trees exist there and screening can be added to further diminish any material impacts that might result.

The Hearing Examiner does not find that material impacts would generally result from such an addition to the rear of the house. The proposed location appears to be the only practical location for this addition, so there is no lesser requirement that could be imposed that would allow the Applicants to construct this particular addition.

The Hearing Examiner further finds that in this neighborhood, there are similar sized family room additions and that this is not an uncommon addition to a home in this particular neighborhood.

The Hearing Examiner concludes that denial of this application would result in practical difficulty in that this Applicant could likely build no additions to the rear of his home that would not require a variance to the rear yard setback. There will be no substantial detriment to adjacent properties as a result of approval, nor will this addition materially impair the purpose of the Code or the public interest.

The Hearing Examiner recommends approval of the Applicants' request, subject to the following conditions:

1. The Applicants shall obtain all necessary permits and inspections.
2. The Applicants shall submit a landscaping plan to the Department of Planning and Zoning which will locate evergreen plantings to be placed at the rear of the Applicants' property that will, to the satisfaction of the Department, provide effective screening of this rear addition from the Dietz property located to the rear.

Date MAY 30, 2001

William F. Casey
Zoning Hearing Examiner