

BOARD OF APPEALS CASE NO. 5148

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BEFORE THE

APPLICANT: Bernard Connell

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ZONING HEARING EXAMINER

REQUEST: Use variance to allow a mobile home and to permit 2 principal dwellings on a single parcel in the R1 District; 1621 Dugan Drive, Joppa

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OF HARFORD COUNTY

HEARING DATE: July 9, 2001

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Hearing Advertised

Aegis: 5/30//01 & 6/6/01

Record: 6/1/01 & 6/8/01

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Bernard Connell, is requesting a variance, pursuant to Section 267-32, Table I, of the Harford County Code, to allow a mobile home in an R1 District, and a variance, pursuant to Section 267-22A, to allow more than one principal dwelling on a parcel in an R1, Urban Residential District.

The subject parcel is located at 1621 Dugan Drive, Joppa, MD 21085, and is more particularly identified on Tax Map 65, Grid 1A, Parcel 874. The parcel consists of 3.5± acres, is presently zoned R1, Urban Residential, and is entirely within the First Election District.

Mr. Bernard Connell appeared before the Hearing Examiner and testified that he has owned the property since November 1995 and that he is a 61-year old retiree. The witness stated that when he purchased the property, there was a trailer and 5 sheds on the property, as well as a driveway, a fenced area, and a contaminated well. The Applicant testified that he has constructed home over what was once an existing mobile home. The building is a two-story structure, consisting of a residence on the upper floor and a three-car garage on the lower level. While constructed around an existing mobile home which was located on the property in the past, the mobile home was removed prior to construction of the second floor. The witness testified that to the right of this dwelling is a 12 foot by 66 foot mobile home that has a small addition. To the rear of that building is a framed utility structure. The witness testified that he was unaware that he needed a permit to construct this home and, further testified that he was told by representatives of the Department of Planning and Zoning that he did not need a permit because this construction consisted only of an upgrade to an existing structure.

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The Applicant testified that he lives in the trailer with his nephew and family and collects antique cars, which he stores on the property, and stores parts in the sheds. The witness testified that he intends to live in the home when construction is complete and said that plumbing remains to be done and that he would need at least 6 months to complete all of the work that is required to finish this house, which would include drainspouting, decking and other finishing within the home.

Mr. Anthony McClune appeared on behalf of the Department of Planning and Zoning and testified that the Department objects to the grant of the variances requested in this case and points out that this is not a request for an area variance but, in fact, constitutes a use variance request, which has a significantly different standard to be applied to such a request than if it were merely for a setback or a minor area variance. Mr. McClune pointed out that when the inspector checked the home that is under construction, it appeared that the house was already being occupied. There was, in fact, a range, a microwave, a T.V., a pool table, and clothing. The bedroom was locked and access was denied to the inspector during the inspection as to that bedroom. Mr. McClune concluded by stating that there is nothing unusual topographically about this property, and it is much like other R1 properties in the surrounding area.

Ms. Lillian Hamilton appeared next and testified that she is a neighbor of the Applicant and is aware that her husband helped work on the current home that is under construction. She also stated that she has been to the site and described its deplorable condition prior to the purchase by the Applicant. The witness stated that Mr. Connell has made substantial improvements to this property and recommended approval of the requested variance.

CONCLUSION:

The Applicant is requesting a variance, pursuant to Section 267-32, Table I, of the Harford County Code, to allow a mobile home in an R1 District, and a variance, pursuant to Section 267-22A, to allow more than one principal dwelling on a parcel in an R1, Urban Residential District.

Section 267-32 sets forth the requirements for specific districts and includes the minimum lot area, area per dwelling or family unit, parcel area, lot width, yards, setbacks

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and maximum building height allowed for uses permitted for each district. Mobile homes are not permitted in the R1 District.

Section 267-22A provides:

“Separate lot requirements. Except as otherwise permitted by this Part 1, not more than one principal building used for dwelling purposes shall be permitted on any single lot. Establishment of a building with separate dwelling units for rental, cooperative or condominium purposes or as continuing care retirement community on a single lot shall not violate this requirement.”

The Hearing Examiner finds that the Applicant is requesting a use variance, as distinguished from an area variance in this particular case. The first request is for a mobile home in an R1 District, which is not permitted by the Code. Secondly, is a request to permit two dwellings on the property, which is also not permitted by the Code.

The Court of Special Appeals of Maryland has noted the distinction between a use variance, which changes the character of the zoning district and where there is some more difficult burden of proving undue hardship (i.e. needed to avoid confiscatory operation of ordinance) and an area variance (height, setback, etc.), where there is a lesser burden of proving practical difficulty. To prove undue hardship for a use variance, the following three criteria must be met:

1. Applicant must be unable to secure a reasonable return or make any reasonable use of his property (mere financial hardship or opportunity for greater profit is not enough).
2. The difficulties or hardships are peculiar to the subject parcel property in contrast with other properties in the zoning district.
3. The hardship was not result of the Applicant’s own actions.

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To prove practical difficulty for an area variance, the following criteria must be met:

1. Whether strict compliance with requirements would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome.
2. Whether the grant would do substantial injustice to Applicant as well as other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief.
3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md. App. 28, 322 A.2d 220 (1974).

Based on the testimony of the witnesses that appeared before the Hearing Examiner, the Hearing Examiner finds that there are no unique characteristics of this property and it is, in fact, much like other R1 zoned properties in the communities. The difficulties or hardships associated with this particular application are hardships and difficulties that result from the Applicant's own actions. At one time, the Applicant had a valid, non-conforming mobile home use on the property. The Applicant chose to remove that mobile home and constructed a garage with a dwelling on the second floor without a permit. Additionally, the Applicant also brought a second dwelling onto the property – another mobile home.

As to use variances, the law in Maryland is very clear, “The need sufficient to justify an exception must be substantial and urgent and not merely for the convenience of the Applicant. Inasmuch as the aim of the ordinance is to prevent exceptions as far as possible and the liberal construction allowing exceptions for reasons that are not substantial and urgent, would have the tendency to cause discrimination and eventually destroy the usefulness of the ordinance.” **City of Baltimore v. Byrd**, 191 Md. 632, 62 A.2d 588; and also, **Carney v. City of Baltimore**, 201 Md. 130, 93 A.2d 74 (1952).

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Based on the evidence presented, coupled with the guidance of the Maryland Courts that have addressed the subject, the Hearing Examiner recommends that the Applicant's request be denied.

Date AUGUST 21, 2001

William F. Casey
Zoning Hearing Examiner