

**APPLICANT:** William J. Cooper

**BEFORE THE**

**REQUEST:** Variance to permit a proposed sunroom and existing basement stairway to encroach into the required setbacks

**ZONING HEARING EXAMINER**

**FOR HARFORD COUNTY**

**BOARD OF APPEALS**

**HEARING DATE:** August 29, 2005

**Case No. 5501**

### **ZONING HEARING EXAMINER'S DECISION**

**APPLICANT:** William J. Cooper

**LOCATION:** 1904 Medallion Court — Forest Lakes, Forest Hill  
Tax Map: 40 / Grid: 2D / Parcel: 321 / Lot: 420  
Third (3<sup>rd</sup>) Election District

**ZONING:** R1 / Urban Residential District - COS / Conventional with Open Space

**REQUEST:** A variance, pursuant to Section 267-36(B), Table IV, of the Harford County Code, to permit an addition to encroach into the 40 foot rear yard setback (37 feet proposed), and a variance, pursuant to Section 267-26(C)(6), to permit an existing basement stairway to encroach into a public utility easement in an R1/COS District.

#### **TESTIMONY AND EVIDENCE OF RECORD:**

The subject parcel is an approximately .40 acre lot, improved by a single-family residence. The parcel itself is roughly uniform in shape, with its rear lot line being 143 feet long, and the front lot line being 106 feet long. The side lot lines are generally symmetrical, and are between 140 – 145 feet long. A distinguishing feature of the property is that its back yard slopes sharply upward beginning about 15 feet from the rear of the house. To the north, or to the right of the house as seen from the street, is located a Natural Resources District.

William Cooper, Applicant, testified that the outside entrance to his basement is partially located within a 10 foot Harford County Utility Easement. A portion of the concrete basement entrance pad actually encroaches slightly into that easement. Mr. Cooper attributed this to a builder error. The side on which the basement entrance is located is the north side of the property, or the Natural Resources District side.

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A review of Attachment 4 to the Staff Report, which is a site plan of the property, reveals that the basement pad is approximately 3-1/2 feet into the 10 foot Utility Easement at its most pronounced point. Accordingly, the Applicant is requesting a variance of roughly 3-1/2 feet in order to accommodate the intrusion of this basement entrance. The Applicant indicates that his neighbors have expressed no objection to the requested variance.

In the file is a letter from Cheryl Banigan of the Harford County Department of Public Works indicating that “the encroachment of the concrete stairs into the Drainage and Utility Easement will have no adverse effect to drainage in the area . . . there are no County utilities located within the easement.” The Department of Public Works accordingly has no objection to the granting of a variance.

Mr. Cooper also requests a variance to the required 40 foot rear yard setback in order to construct a sunroom off the back of his house. This sunroom would encroach approximately, again at its widest point, 3 feet into the setback. Mr. Cooper wishes to add additional living area for a physically challenged individual who resides in his house. The sunroom would have dimensions of roughly 14 feet by 16 feet. According to Mr. Cooper, these dimensions would make the sunroom more easily accessible by a wheelchair bound individual.

Mr. Cooper indicated that his lot is unique in that the rear part of his property slopes upward at about a 30 degree slope. Upon questioning, Mr. Cooper indicated that a sunroom, although of different dimensions, could be constructed without a need for a variance.

Mr. Cooper indicated that his Homeowners Association had given approval for the sunroom.

Mr. Cooper, both in his testimony and in his application, asserts that the variance requested is not material, and will have no detrimental impact to his property or adjacent properties. Mr. Cooper submitted letters from neighbors indicating their lack of opposition.

Mr. Cooper stated that other lots in the subdivision have dimensions which are more regular than his and which more readily facilitate the construction of similar additions. Furthermore, the interior layout of Mr. Cooper’s house does not easily permit the construction of a sunroom in any other location. The house has an unusually large footprint. If the sunroom were constructed on the Natural Resources side of the house (the north side) a specially equipped bathroom would require relocation. If constructed on the south side, the addition would take up limited ground at added cost, and the heat pump would need to be relocated.

The Applicant indicates that a reduction in the size of the sunroom would create a hardship for the physically challenged individual living at the house. The sunroom would positively impact property values. The Applicant further asserts that the addition would not be noticeable.

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The Harford County Department of Planning and Zoning has recommended approval. For the Department testified Mr. Sigler who stated that the subject parcel is one of the smaller in the subdivision, and the sunroom would be similar to others in the neighborhood. The lot slopes sharply up to the rear property line. Accordingly, he feels the property is unique. The sunroom will have no impact on any adjoining property owner.

There was no testimony or evidence presented in opposition.

### **APPLICABLE LAW:**

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

*“Variances.*

- A. *Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 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 Part 1 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 Part 1 or the public interest.*
- B. *In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

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The Applicant is requesting a variance to Section 267-26(C)(6) of the Harford County Code, which states:

*“(6) No accessory use or structure, except fences shall be located within any recorded easement area.”*

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

The Applicant lives in an attractive, one story home in the Forest Lakes subdivision. The lot has relatively uniform dimensions, although it is distinguished by a fairly sharp, upward sloping rear yard over the last rear 35 to 38 feet of the property.

To the south, or right side of the property as seen from the street, the builder of the home had constructed a relatively common basement entrance. This is characterized by a set of steps entering the basement, and a small concrete pad around it. Unfortunately, the basement steps, while 6-1-2 to 8 feet from the property line, intrude into a Harford County platted Utility Easement by about 3-1/2 feet. The side on which the basement steps are located is bordered by a Natural Resource District, and does not contain any residential uses.

While potentially correctable, the Applicant would surely undergo a hardship if required to so do. Relocating the entrance would necessitate additional excavation, and possibly some additional design work, in order to move it out of the easement. On the other hand, the Department of Public Works indicated no utilities exist within the easement area, and that the location of the steps causes no adverse impact. The Department of Public Works accordingly has no objection to the variance.

It is, accordingly, found that the subject property suffers from an unusual feature, i.e. the builder's mis-location of the steps, which would cause the Applicant practical difficulty if the variance were not granted. It is further found that the granting of the variance would have no adverse impact upon any adjoining property or any neighbor.

The Applicant also requests a variance to allow his construction of a 16 foot wide by 14 foot deep sunroom to the rear of his house. The Applicant asks for a variance as the improved sunroom would encroach some 3 feet into the rear 40 foot required setback. The Applicant asserts that the sunroom could not be built on either side of the home without undue difficulty, primarily due to the interior design of the house and exterior improvements. While that testimony is accepted, it should be noted that neither the location of a heat pump, or interior design elements, justify a finding of uniqueness of property or topographical condition.

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The Applicant indicates that the rear of the house is the only practical location. The sunroom is proposed to be 14 feet deep which is necessary in order to more easily accommodate use by a wheelchair bound individual. If a variance were not granted, the sunroom would remain at least 16 feet wide, although it appears from the site plan that the sunroom could in fact be considerably wider. However, clearly, its depth would be only approximately 11 feet before it is impacted by the rear set back line. The Applicant has indicated that his property is unique because the rear yard slopes upward. However, that physical characteristic has no direct bearing on or connection with the Applicant's request to build a sunroom of the dimensions submitted. In other words, the sloping rear yard, even if that were found to be unusual, does not in and of itself cause the Applicant any articulated practical difficulty or hardship. It may be a unique feature of his property, but it does not cause the Applicant to suffer a difficulty related to his requirement to observe the rear yard setback.

A review of the site plan in the file also shows that the house is located directly on the front yard setback line and, as a result, no argument of improper house siting cannot be made.

Furthermore, a review of aerial photos, and subdivision plat (Attachment 5) show no significant difference between the subject property and others in the community.

The Applicant's articulated difficulty is that if not granted the variance, a wheelchair bound individual would be less well accommodated. No additional reason or detail was given by the Applicant for this assertion.

Further compounding the Applicant's position is his admission that the sunroom could be constructed with a depth of less than 14 feet.

While the Applicant's position is understandable, especially in view of the apparent lack of any adverse impact on the neighborhood, there has simply been no acceptable basis submitted for the granting of a variance. The lack of such a basis in the Staff Report is also noted. While the Staff recommends approval, it contains no analysis of how the variance standard is met, or legal justification for granting of the variance.

Accordingly, it simply cannot be found, by even an extremely liberal interpretation of the variance statute, that a uniqueness of the property or topographical condition somewhat results in the Applicant experiencing practical difficulty or unreasonable hardship related to the rear yard setback. He would suffer the same difficulty if the lot did not slope, i.e., he would remain impacted by the setback requirement. Simply being unable to construct an improvement in an area desired is not a basis for the granting of a variance. If an unusual feature of the property, not simply the existence of a setback, prevents one from doing something that another similarly situated homeowner could do, then the variance could be justified. However, there can be no such finding made in this case. (See Cromwell v. Ward, 102 Md. App. 691 (1995)).

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**CONCLUSION:**

For the above reasons it is recommended that the requested variance to allow an existing basement stairway to encroach into the Harford County Utility Easement be approved.

It is recommended that the requested variance to allow an intrusion into the rear yard setback to construct a sunroom is denied.

Date:           October 7, 2005

ROBERT F. KAHOE, JR.  
Zoning Hearing Examiner

**Any appeal of this decision must be received by 5:00 p.m. on NOVEMBER 4, 2005.**