

**APPLICANTS:**  
**Gerald & Bette Ann Tassone**

**REQUEST: A variance to construct a  
sunroom within the required rear yard setback**

**HEARING DATE: September 26, 2005**

**BEFORE THE  
ZONING HEARING EXAMINER  
FOR HARFORD COUNTY  
BOARD OF APPEALS  
Case No. 5507**

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

**APPLICANTS:** Gerald & Bette Ann Tassone

**LOCATION:** 805 Peppard Drive — Brentwood Park, Bel Air  
Tax Map: 48 / Grid: 1E / Parcel: 234 / Lot: 100  
Third (3rd) Election District

**ZONING:** R3/COS / Urban Residential District – Conventional with Open Space  
Development

**REQUEST:** A variance, pursuant to Section 267-36(B), Table VI, of the Harford  
County Code, to allow an enclosed sunroom to encroach within the  
required 30 foot setback (23 foot setback proposed), in the R3 District.

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

Bette Ann Tassone, Co-Applicant, described her property as being approximately 6,500 square feet in size, improved by a two-story, vinyl sided home with an attached a two-car garage. Mr. and Mrs. Tassone and their 18 year old child reside in the residence, which is located in the Brentwood Park subdivision.

The subject property is improved by a roofed, (but un-walled) wooden deck to the rear of the residence having dimensions of approximately 21 feet by 14 feet. The Applicants wish to enclose that structure and, accordingly, make it into an unheated sunroom. The existing roof would be utilized. The walls would be glass and screen. The existing deck foundation would be used. The purpose of the sunroom would be to help to reduce the impact of sunlight; to help control and keep out insects; and to help provide additional insulation to the home.

The existing deck, being an unenclosed structure, is allowed to intrude into the rear 30 foot setback by 6 feet. If the Applicants request is granted and they are allowed to enclose what is now an open living space with glass and screen, the Code provision which allows an open deck to intrude into a setback will no longer be applicable, and the enclosure cannot be allowed without the requested variance.

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The Applicants have identified a Natural Resources Buffer District to the rear of their property which, they assert constitutes an unusual feature.

The Applicants have further described their property as being flat, with no unusual topographical features.<sup>1</sup>

The Applicants indicated that no neighbors had expressed any opposition.

Next for the Applicants testified Terry Hunt, project manager for Patio Enclosures. Patio Enclosures is the firm which would be constructing the enclosed sunroom. Mr. Hunt explained that Patio Enclosures had constructed many similar sunrooms on many lots throughout Harford County. He iterated into the record the addresses of a number of residences to which Patio Enclosures had affixed additions. These units were located within the Brentwood Park subdivision. However, to Mr. Hunt's knowledge, none of these other properties required variances.

Mr. Hunt also stated that the subject property has smaller dimensions than many other lots in the subdivision. He introduced tax print-outs of three other properties which he described as being comparable to the Applicants, although with larger dimensions. The dimensions cannot be determined from the tax print-outs, although their size can be determined. The three properties referred to by Mr. Hunt range in size from 8,741 square feet to 9,003 square feet. The property of the Applicants is 6,534 square feet. Mr. Hunt stated that the smallness of Applicants' lot makes it unusual.

Next for the Harford County Department of Planning and Zoning testified Dennis Sigler. Mr. Sigler, in reiterating the findings of the Department's Staff Report, testified that the lot of the Applicants is similar to many others in the neighbor and there is nothing unusual about it. The lot is quite level. While there is a Natural Resources Buffer to the rear of the property, that does not prohibit the Applicants from constructing the patio enclosure. It is the 30' rear yard setback, to which all properties in the subdivision are subject, which prohibits the construction of the enclosure. Mr. Sigler stated the unenclosed deck is legal as it is allowed to encroach the existing setback by 25%, as a matter of right.

There was no testimony or evidence presented in opposition.

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<sup>1</sup> In contrast to many other cases which have come before the Board, the Applicants' home appears to sit exactly on the minimum 25' front yard building setback line and, in fact, may slightly encroach over it. Accordingly, there can be no argument that the Applicants suffer a difficulty because the house is not properly situated on the front yard setback line.

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**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.”*

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

The Applicants own an attractive, two-story single family home, improved by an attached two-car garage, on a 6,500 square foot lot in the Brentwood Park subdivision. To the rear of their home they have constructed an equally attractive 21 foot by 14 foot deck, over which has been constructed a roof. The sides are open. The deck was constructed with a permit and is allowed to intrude into the rear yard setback by approximately 6 feet as a matter of right.

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The Applicants now desire to enclose the deck. This would consist of constructing glass and screen walls. The result would be an unheated sunroom which would no doubt provide much more utility to the Applicants than does the presently open, although roofed, deck area.

Unfortunately for the Applicants, the standard which is to be applied by the Harford County Zoning Code is the same standard which is applied to all variances, whether the impact be large or small. There must be something unusual about the property which creates a hardship to the Applicants if the requirements to the Code are fully enforced. This means that it would somehow be unfair to the Applicants to enforce the 30 foot rear yard setback, and this unfairness must derive from some unique or unusual feature of their property. The construction by the Applicants of an improvement on the property, such as a deck, cannot be considered an unusual or unique circumstance. If, for instance, the Natural Resources Buffer impacted the Applicants' property more than a neighbor's property, and as a result the Applicants could not build a deck, whereas the neighbor could build a deck, then this would be a hardship for which relief could be granted. Hardship derives from this unique aspect of the Applicants' property, i.e., the Natural Resource Buffer impacts the Applicants more than it impacts their neighbors.

However, a review of Attachment 3 to the Staff Report, which is the Applicants' site plan, shows that the structure does not, in fact, intrude into the Natural Resources District, and that the Natural Resources District Buffer area has no impact upon the Applicants' ability to utilize the deck as an enclosed sunroom.

Another often used example is a corner lot which is subject to two front yard setback requirements. A front yard setback is greater than a side yard setback. Accordingly, on corner lots useable space is reduced drastically compared to the neighbor which is not a corner lot. Corner lots are unusual. Their unusable feature creates a hardship to the owner in that he or she is not able to fully utilize his or her lot as can others in their neighborhood not similarly impacted. A variance is often appropriate in that instance.

Often topographical features preclude an Applicants from building a deck or a pool or placing a shed in an area of the property which does not violate setbacks. Only by violating a setback can a level area, or area not impacted by trees, or not impacted by Natural Resources District, or utility easements, can a structure be located. If it is shown that the lot in question is impacted by these features more so than other lots in the neighborhood, then this is considered an unusual feature which could justify the granting of a variance.

However, the Applicants have identified absolutely no unusual feature of the property which somehow creates a problem for the Applicants in complying with a 30 foot rear yard setback. While they Applicants' propose a relatively minor addition to the home by the enclosure of an existing deck, nevertheless, the variance standard simply cannot be ignored. While certain variance requests have no or little impact, and they in fact may be beneficial to the neighborhood, that cannot be the guiding standard.

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The proper standard set forth in Code Section 267-11 and must be observed. While often the standard may be liberally applied there must, at the very least, be an articulated finding of compliance with its requirements before the requested relief can be granted. This articulated finding must be based upon fact.

While there is no difficulty in finding that the variance request, if granted, would not be detrimental to adjacent properties, there is simply no substantiation for a finding that the uniqueness of the property or of its topographical conditions results in practical difficulty or unreasonable hardship. The difficulty experienced by the Applicants is their inability to enclose their deck. Their inability to do so results from the existence of a setback. This is not an unusual feature of their property. All similar properties are subject to rear yard setbacks.

The argument is made by the Applicants that the lot is smaller in size than other lots in the subdivision. While somewhat contradicted by the testimony of Mr. Sigler, it is also clear from Attachment 3 in the file, which is the site plan of the property, that the lots on either side of the subject property appear to have almost exactly the same depth as the subject property, and are impacted in similar ways by the operation of the 75 foot Nature Resources Buffer District.

Furthermore, a review of Attachment 8 (final plat), Attachment 10 (aerial photo) and Attachment 6 (topographical map) quite clearly demonstrate that the Applicants' property is substantially similar in size and dimension to most other lots in their subdivision.

Other variances have been granted based upon a failure to locate a house on the front yard setback line, thus reducing the available buildable space to the rear of the house. This analysis, however, does not apply to the present situation as the Applicants home is directly on, if not over, the minimum front yard building setback line.

The relief requested by the Applicants is not extraordinary and, as mentioned above, would most likely have little if any impact on any neighbor or on the neighborhood. However, the Board of Appeals must carefully consider requests and grant appropriate relief. Often times the variance standard applied is liberally interpreted, and the relief is tailored in such a way to meet the particular needs of the individual applicant and at the same time protecting the integrity of the Code and the interest of the surrounding neighbors. Nevertheless, some justifiable and legally sufficient reason must be found which meets the applicable variance standard. An applicant cannot be granted a variance simply because an applicant desires it to be done.

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**CONCLUSION:**

For the above reasons, it is recommended the requested variance be 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.**