

APPLICANTS:
James & Jimmie Melton

REQUEST: Variance to permit an addition within the required 40 foot front yard setback

HEARING DATE: October 5, 2005

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS

Case No. 5512

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: James Ray Melton and Jimmie Leigh Pence Melton

LOCATION: 1702 North Fountain Green Road — Land of J. John Minnick, Bel Air
Tax Map: 41 / Grid: 1C / Parcel: 616 / Lot: 1
Third (3rd) Election District

ZONING: AG / Agricultural

REQUEST: A variance, pursuant to Section 267-34C, Table II of the Harford County Code, to permit an addition to encroach into the required 40 foot front yard setback (20 foot setback proposed) in an Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

James Melton, Co-Applicant, seeks permission to encroach 20 feet into the required 40 foot side yard setback in order to build a four-car garage. Mr. Melton described his home as a one story frame dwelling with three bedrooms, one bath, a dining room and kitchen. The Applicants and their son live on the property, which they have owned since 1982.

Mr. Melton believes his property is unique. To the rear portion of his property (being opposite Fountain Green Road) is located an intermittent stream which prohibits construction of any improvement to that area. The rear part of his property is also impacted by the location of the property's septic drain field, and also contains significant wetlands. All of these features combine to prohibit any sort of significant construction to the rear of the existing home.

Access to the proposed garage will be through what Mr. Melton described as a 50 foot right-of-way located to the north/northeast side of the subject property. This right-of-way intersects Fountain Green Road and serves a number of other properties located along that right-of-way. Apparently this right-of-way is privately maintained, and functions as a common driveway.

Mr. Melton explained that he and his wife now have a two-car garage. However, they wish to convert that existing two-car garage into additional living space. This is motivated in part by their plan to eventually have Mr. Melton's mother move in with them.

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The Applicants have spoken to their neighbors and none has expressed any opposition. No neighbor who uses the 50 foot right-of-way has any problem with its use. There are existing trees along the 50 foot right-of-way on the Melton property, which will help screen the garage from passers-by. Mr. Melton has no problem with any of the conditions proposed by the Harford County Department of Planning and Zoning.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune has visited the property, and he believes it to be unique.

Mr. McClune and the Department were initially concerned about the extent of the variance, which requests a 50% reduction in the required side yard. However, upon visiting the property it became apparent to Mr. McClune that the 50 foot right-of-way, which serves six lots in the Applicants' small subdivision, actually functions as a common driveway. Therefore, while the Applicant has imposed upon his lot a front yard setback requirement along Fountain Green Road, and a 40 foot setback off the 50 foot right-of-way, the Applicants' property on the 50 foot right-of-way actually serves as a side yard. If not for the existence of the 50 foot driveway, the required side yard setback would be only 20 feet. The Applicant would not need a variance if he were required to comply with a 20 foot side yard setback.

Mr. McClune does not believe the addition would have any impact on other lots in the neighborhood. The house across the 50 foot right-of-way from that of the Applicants is actually closer to the 50 foot right-of-way than would be the Applicants' proposed garage. Mr. McClune also believes that the location proposed is the only practical one for the garage.

The Staff Report states:

“The Department finds that the subject property is unique. The property contains an intermittent stream which severely restricts the buildable area of the lot. The area along the private road serves as the applicant’s side yard. The private road is a narrow road that services only a few lots. The proposed garage will not impact traffic along the private road. The requested variance will not have an adverse impact on the adjacent properties or the intent of the Code.”

There was no testimony or evidence given 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:*

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- (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 have been residents of the subject property for almost twenty-two years. The property itself is an approximately 3/4 acre parcel, improved by a three bedroom, one bath rancher.

The property is distinctive and unique in two respects: any development in the rear yard of the property, which contains most of the land area of the lot, is made impossible by the existence of an intermittent stream, the septic reserve area, and wetlands. Another and perhaps more unusual feature of the property is that while it is subject to two front yard setbacks, in fact the front yard setback off the 50 foot right-of-way actually serves as a side yard. The 50 foot right-of-way is not a public street; it serves six residences in total. If it were not for the existence of the 50 foot right-of-way, the Applicant would only be required to comply with a normal side yard setback, and no variance would be necessary.

It is accordingly found that the Applicants suffer a practical difficulty due to an unusual feature of their property, in that the property is highly constrained by natural features to the rear, and is impacted by the necessity of having to comply with two front yard setbacks. The existence of the two front yard setbacks, particularly along the 50 foot right-of-way, creates a difficulty in that the Applicants are unable to construct an addition onto their home, similar to others in the neighborhood and throughout Harford County.

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It is further found that the proposed garage will be screened by existing vegetation, and should have no adverse impact on any of the neighbors or the neighborhood.

CONCLUSION:

For the above reasons it is recommended the requested variance be granted subject to the following conditions:

1. That the Applicants shall obtain all necessary permits for the conversion of the existing garage and the construction of a new garage.
2. The garage shall only be for the personal use of the Applicants.
3. The garage shall not be used in the furtherance of a business.
4. The garage shall not be used for the storage of commercial vehicles or contractors equipment.
5. The Applicants shall, where possible, maintain existing trees between the garage and the private roadway.

Date: November 9, 2005

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on DECEMBER 12, 2005.