

APPLICANTS:
Wayne and Agnes Seifert

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

HEARING DATE: January 11, 2006

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5519

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: Wayne and Agnes Seifert

LOCATION: 1421 Overlook Way — Hickory Overlook subdivision, Bel Air
Tax Map: 41 / Grid: 2B / Parcel: 241 / Lot: 267
Third (3rd) Election District

ZONING: R3 / Urban Residential District

REQUEST: A variance, pursuant to Section 267-36(B), Table VII, of the Harford County Code, to permit an addition to encroach into the 40 foot rear yard setback (30 foot setback proposed) in the R3 District.

TESTIMONY AND EVIDENCE OF RECORD:

First testified Wayne Seifert, Co-Applicant. Mr. Seifert stated that he has been a Harford County resident for approximately 38 years. He and his wife recently purchased a house in the Hickory Overlook subdivision, located north of Bel Air. Hickory Overlook is an age-restricted community, recently developed and built.

The Applicants' parcel is approximately 6,760 square feet in size, improved by an end-of-group townhome containing 3 bedrooms and 3 baths. The Applicants settled on their property in August of 2005.

The Applicants desire to construct a deck with a screen and glass enclosure to the rear of their home. The addition would be a 14 foot by 23 foot, irregular shaped sunroom, along with a 9 foot by 13 foot open deck with landing and steps to grade. Mr. Seifert testified that in order to build this addition, he and his wife need a variance from the existing 40 foot rear yard setback, as the improvements will intrude upon that setback by 10 feet. As a result, the sunroom, once built, will be 30 feet from the back property line.

Mr. Seifert believes there are approximately 53 units within the Hickory Overlook subdivision. All of those units, except for three, would need variances in order to construct the type of enclosure proposed by the Applicants due to their shallow back yards.

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Mr. Seifert asserts that his townhome community is in fact a cluster townhome development which would require a 25 foot setback only, not a 40 foot setback. If this type of construction were considered to be cluster townhomes, then no variance would be necessary. Mr. Seifert, in support of this assertion, stated that his subdivision lies on a closed loop road. The units in his subdivision are not traditional townhomes, but are cluster townhomes, as defined by the Harford County Code. A cluster townhome is a building with four (4) or more units arranged around a central court, according to Mr. Seifert. In support of his argument, he offered photographs of what he considered to be traditional townhomes.

In further support of their application, the Applicants provided letters from four neighbors who expressed lack of opposition to the proposal.

Mr. Seifert further stated that he had paid a \$12,000.00 premium for his lot, as it backs up against a forested, open area. Mr. Seifert also asserts as an additional reason for the requested variance the fact that the rear part of his lot is encumbered by a Natural Resources District.

In summation, Mr. Seifert gave his reasons for requesting a variance as follows: (1) the wrong criteria was used by the Harford County Department of Planning and Zoning – his home is a cluster townhome, and not a townhouse; (2) most of the homes in his subdivision have rear yards similar to his, which Mr. Seifert considers a shallow rear yard; (3) the Applicants paid a premium price for their lot; and (4) part of his back yard is in the Natural Resources District.

Next for the Applicants testified Mr. Harbaugh, a representative of Patio Enclosures which had prepared the sunroom plans for the Applicants. Mr. Harbaugh stated that the proposed sunroom would help block the sun, and shield the occupants from harsh sunlight. The room would be constructed with screen and glass. In Mr. Harbaugh's opinion, the proposal would help the Applicants enjoy their back yard.

The materials for the sunroom would match that of the existing house. Mr. Harbaugh believes that the sunroom would look good with the house. The variance is requested as there is simply not enough room in the back yard to build the proposed sunroom.

Next testified John Kirkpatrick, a resident of 1429 Overlook Way. Mr. Kirkpatrick testified that he lives about 100 yards away from the Applicant. Mr. Kirkpatrick is concerned about the precedent which an approval of the variance would create. He does not believe that the rules should be broken by Mr. Seifert. While Mr. Kirkpatrick has no personal problem with the Applicant, Mr. Seifert, nor any personal animosity towards them, Mr. Kirkpatrick feels strongly that the existing rules should be enforced and no exceptions should be made.

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Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune, in reiterating the findings of the Staff Report, stated his opinion that the property is not unique, and referred to attachment 12 to the Staff Report which is a plat of the subject property and surrounding homes. In Mr. McClune's opinion this plat shows that all of the homes and lots shown on this plan are similar to the Applicants'. Many if not most are of similar size, and many are impacted by existing Drainage and Utility Easements and/or the Natural Resources District.

Mr. McClune stated that while the Applicants' property is indeed encumbered by a Natural Resource District, that Natural Resource District is wholly within the applicable 40 foot setback and does not cause the Applicants any potential problem or unique hardship.

Mr. McClune also concurs with the previously given testimony of Mr. Seifert that approximately 50 of the 53 lots in the subdivision would need similar variances if they were to build similar sunrooms.

Mr. McClune also stated that the Seifert's house is not a cluster townhouse. Cluster townhouses are defined differently. Cluster townhomes have side yard setbacks of at least 10 feet. The Applicants' townhome is a standard townhome which has no required side yard setback.

Other than Mr. Kirkpatrick, 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:*
- (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.*

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- 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 reside in a newly built and newly purchased, attractive townhouse in the Hickory Overlook subdivision of Harford County. That subdivision contains 53 units, many if not most of which are contained on lots of approximately 6,000 - 7,000 square feet.

The Applicants request a variance to encroach into their rear yard 40 foot setback by 10 feet. The Applicants would need such a variance to construct an enclosed sunroom as requested. It should be noted the Applicants can construct a deck and screened-in room without a variance. It is only their desire to construct a fully enclosed sunroom, with glass walls, which necessitate the request for this variance.

The Applicants suggest that their rear yard is shallow, accordingly necessitating the request for the variance. A review of the plat of the Applicants' property, which includes a number of other lots within Hickory Overlook, reveals quite clearly that the Applicants' property is, if anything, larger than the average size. Accordingly, it is found that the Applicants' property in size and dimension is similar to others within its community.

The Applicants suggest that because many other (50 of 53) homes would also need similar variances if they were to construct a similar sunroom, the Applicants accordingly somehow suffer a hardship. However, this evidence does not support the Applicants request for a variance. Indeed, it supports a finding that the Applicants' property is not unusual or different from any other property in the neighborhood.

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While the Applicants may wish to have an enclosed sunroom, and cannot do one of the size proposed without a variance, this in and of itself is not sufficient grounds for granting of the requested relief. Homeowners are not free to violate setback restrictions simply because they wish it to be so. If their property is unique, then the request can be considered. If hardship results from that uniqueness, then the request may be granted. However, there is nothing in the Applicants' initial showing that leads to any conclusion other than the property is similar, almost remarkably so, to other units in its subdivision. Furthermore, the resulting hardship, i.e., the Applicants' inability to construct a sunroom, is not the type of hardship that would be experienced only by the Applicant and not by any other resident of Hickory Overlook. All residents will experience the same hardship.

In reviewing Mr. Seifert's contention that his unit is actually a cluster townhouse, a review of Table VI of the Development Regulations, clearly indicates that, while there are many similarities between a cluster townhouse and a traditional townhouse, there exist at least two differences. One is that a cluster townhouse has no required minimum front yard setback, and a required minimum side yard of 10 feet. A townhouse, on the other hand, has a 25 foot front yard setback, and has no minimum side yard setback. Obviously, the Applicants' property has no minimum side yard setback and, as can be seen by Attachment 12, has a minimum front yard setback by plat of 25 feet. Accordingly, and quite clearly, the Seifert's residence is a townhouse, not a "cluster townhouse". The Seiferts enjoy a 40 foot rear yard setback.

It is also important to note and comment on the impact which the granting of this variance would have on the Hickory Overlook subdivision. This is a new subdivision. It is a subdivision of attractive homes which are age-restricted, meaning they are exclusively for the senior part of our population. There was no evidence submitted or suggestion made that any other home in the subdivision had requested or received a similar variance. To allow the requested variance, without any legal justification whatsoever, would be to encourage any other homeowner in the subdivision to come forward and request a similar, or perhaps greater variance. The result would very easily be a hodge podge of different structures, different actual building setbacks, and a diminishment of the attractiveness and cohesion of the subdivision. To deny similar relief requested by other similarly situated property owners, after an approval of the Seifert's request, would potentially be inequitable to those other homeowners. It is not, however, inequitable to deny the Seifert's request. A denial would prevent the creation of a potentially devastating precedent. A denial is in fact required by a proper application of the Harford County Zoning Code.

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CONCLUSION:

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

Date: January 30, 2006

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on FEBRUARY 28, 2006.