

APPLICANTS
Thomas & Caroline Koluch

REQUEST: Variance to permit an attached garage within the required 40 foot side yard setback

HEARING DATE: January 11, 2006

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5521

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Thomas M. Koluch

CO-APPLICANT: Caroline M. Koluch

LOCATION: 3301 Deer Hill Road/Cherrywood Estates, Street
Tax Map: 25 / Grid: 2D / Parcel: 224 / Lot: 30
Fifth (5th) Election District

ZONING: AG / Agricultural

REQUEST: A variance pursuant to Section 267-34C, Table II, of the Harford County Code, to permit an attached garage to encroach the required 40 foot side yard setback (22 foot setback proposed), in an AG District.

TESTIMONY AND EVIDENCE OF RECORD:

Thomas M. Koluch, Co-Applicant, testified that he and his wife wish to build a garage to be attached to their existing single family home by a breeze-way. The garage, due to the topography of the property, must be located approximately 22 feet from the side yard. The property is subject to a 40 foot side yard requirement, and the Applicants' request is for an 18 feet variance.

Mr. Koluch described his house as a three bedroom, two and a half bath, single-family residence, constructed in approximately 1996. The Applicants purchased the property in October 2004. The proposed garage, which would also include a work shop area, would be approximately 24 feet by 31 feet in dimensions, with a 29 foot by 23 foot addition to its rear. At the present time the Applicants do not have a garage or any outbuilding on the property.

Mr. Koluch described his property as a steeply sloped, 12 acre, heavily wooded parcel which adjoins Deer Creek. Of the 12 acres, only about one-half acre is cleared of vegetation. The entire property is steeply sloped, and the house is actually built in part on the slope. The only level portion of the property is to the west, or driveway side of the property, where at present the Applicants park their personal vehicles and which is the location of the proposed garage.

Case No. 5521 – Thomas & Caroline Koluch

The property is also encumbered to the south side of the home by an in-ground propane tank, the water well, underground water lines and electrical transformer. To the north of the residence is a septic system and septic reserve area. Underground satellite cable also enters from the north side of the house.

The Applicant explained that the property is so steeply sloped that while the entrance to his house is at one level, the finished basement rear entrance is also a walk-out. A deck which wraps around the house to its south side is at grade level where it begins at the driveway area, but is one story above the ground in the back, or Deer Creek side of the house.

Mr. Koluch asserts that both the steepness of the property, as well as the improvements which have been constructed around the house, preclude the garage from being located anywhere other than as proposed. Mr. Koluch has attempted to contact his neighbors to express any concern they may have about his application. No neighbor has expressed any opposition to him.

For the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune, in reiterating the findings of the Staff Report, stated that it is only because the Applicants ask that the garage be connected to the house by a breeze-way that any variance at all is necessary.

Mr. McClune stated that the 12 acres is severely constrained by topography, and very unusually so. The garage is proposed for the most level and best suited area of the property. The property itself drops very steeply off to Deer Creek, on which it abuts. The only practical way to avoid a request for a variance would be to bring an enormous amount of fill material onto the site to expand the existing level surface area next to the residence.

Mr. McClune also stated that the nearest home is approximately 250 feet to 300 feet away. Because of the existing septic reserve area on the adjoining property, there is no possibility that any structure or residence could be located any closer to the proposed garage. Accordingly, he feels that if the variance were granted there would be no adverse impact on any adjoining neighbor.

Because of the lack of any impact on any adjoining property or property owner, and given the topographical features which constrict the available location of the proposed garage, Mr. McClune and the Department have recommended approval.

There was no testimony or evidence given in opposition.

Case No. 5521 – Thomas & Caroline Koluch

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 a three bedroom, two and a half bath, single-story home on what is no doubt a very appealing, yet very rugged 12 acre parcel which adjoins Deer Creek in northern Harford County. The steepness of the topography is so severe that the house, which one would enter at ground level from the west, has a basement which actually is a full walk-out below and to the east side.

Case No. 5521 – Thomas & Caroline Koluch

The Applicants made a persuasive showing that the only appropriate location for a garage is as proposed. In addition to the natural steepness of the slope, the Applicants and their predecessors in title have constructed various improvements to the south and north of the home which make it impractical if not impossible to locate any kind of a structure in those areas. The variance requested, which would allow an 18 foot impact into the required 40 foot side yard variance, would not impact any adjoining neighbor. The nearest home is approximately 250 feet to 300 feet away through dense woods. The type of structure proposed by the Applicants is a common one throughout Harford County, and would do nothing but improve the value and usability of the Applicants' home.

It is accordingly found that the Applicants' property exhibits unusual topographical and other features so as to preclude the construction of the proposed garage without the requested variance. The request is the minimum necessary to afford the Applicants the right to construct the garage as proposed. It is further found to be no adverse impact to any adjoining property or neighbor.

CONCLUSION:

Accordingly, it is recommended that the requested variance be granted, subject to the Applicants obtaining all necessary permits and inspections for the construction of the garage.

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.