

APPLICANTS:
George A. Sevick, Jr. and Sandra K. Sevick

REQUEST: A variance to permit an addition within the required rear yard setback

HEARING DATE: April 26, 2006

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5527

ZONING HEARING EXAMINER'S DECISION

APPLICANT: George A. Sevick, Jr.

CO-APPLICANT: Sandra K. Sevick

LOCATION: 303 Millwright Circle – Millstone subdivision, Abingdon
Tax Map: 56 / Grid: 3F / Parcel: 053 / Lot: 22
First (1st) Election District

ZONING: R3 / Urban Residential

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

TESTIMONY AND EVIDENCE OF RECORD:

George A. Sevick, Jr., Co-Applicant, described his house as a townhouse/villa design, of two improved stories and a walk-out basement area, containing three bedrooms and two and a half baths. The Applicants' residence is within the Millstone subdivision, and sits on a 4,500 square foot lot. The Millstone subdivision is approximately one year old and the Applicants are the first residents of their home.

The Applicants wish to construct a sunroom to the rear of their house. The house itself is setback approximately 43 to 44 feet from the rear yard lot line, with the rear yard setback requirement being 40 feet. The Applicants propose a sunroom which would be approximately 14 feet deep. This would necessitate an impact of about 10 feet into the setback and is the reason for the requested 10 foot variance. As the Applicants' townhouse/villa has a walk-out basement, the sunroom would actually be constructed on a deck elevated one floor above the ground level.

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Mr. Sevick described a 30 foot landscape easement lying beyond his lot line owned by the homeowners association.

While Mr. and Mrs. Sevick understand that a screened-in porch of the same size as the proposed sunroom could be built without a variance, they believe that a sunroom is more beneficial and more attractive than would be a screened-in porch. Also, a sunroom can be used twelve months of the year whereas a screened-in porch cannot. Furthermore, Mr. and Mrs. Sevick have physical difficulties which cause them to experience problems with negotiating steps. The sunroom would give them more living space on the first living level of their home.

The proposed plans for the sunroom have been approved by the Applicants' homeowners association and by the developer of the subdivision. The Applicants' neighbors have no objection to the proposal.

Upon direct questioning Mr. Sevick described nothing unusual about his lot. Other homes in the neighborhood have decks, although none have sunrooms. The Applicants feel there is no harm in allowing a variance for the sunroom as it would be an appealing addition to their property, and would not detract from other properties. The Applicants' articulated hardship is that they would be able to build the sunroom except for the operation of the 40' rear yard setback.

For the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune stated that the Department had recommended against the requested variance, explaining that the Applicants have been unable to meet the variance requirements of the Zoning Code. Mr. McClune acknowledges that the sunroom would be attractive and beneficial to the Applicants. However, the Applicants' lot size is the same as others in its subdivision; all have walk-out basements; and there are no other similar sunrooms anywhere within the subdivision. Mr. McClune stated the Applicants have been unable to show any unique circumstance related to their property which would justify the granting of the variance. Accordingly, the Department has recommended denial.

No other witnesses testified in opposition.

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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.”*

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FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants live in a new, attractive subdivision of townhomes located off Laurel Bush Road. Photographs in the file and attached to the Staff Report as Attachments 8A-D show a subdivision of stone and vinyl sided homes, with what appear to be two car garages, all backing up to an attractively landscaped open space. This open space is to the rear of the two rows of homes. As a result, the rear of each unit looks out over the open space and to the rear of the units opposite them. All in all, an attractive design, improved by attractive and substantial homes. However, what is distinctive about the townhomes as shown by the photographs is the lack of any structure similar to that proposed by the Applicants. While numerous decks built above the typical walk-out basements of the units have been constructed, none of those are screened or roofed. Obviously, none are sunrooms. The scene is, as stated above, an attractive one, improved by the relative uniformity of the existing decks.

The Applicants now desire to build not a deck, or a screened-in porch which would be allowed by Code, but a sunroom which would require a variance of 10 feet into the 40 foot rear yard setback. No variance would be necessary for a deck; no variance would be necessary for a screened-in porch. Both of these the Applicants could build as a matter of right. However, a sunroom of the type proposed by the Applicants could not be built without encroaching into the rear yard setback by 25%, or 10 feet.

Unfortunately for the Applicants, there is not a shred of objective evidence which would support the granting to them of a variance. The variance could only be granted if the Applicants were to suffer hardship or practical difficulty as a result of some unusual or unique aspect of their property. While this standard is sometimes broadly interpreted, the Applicants must nevertheless make a showing of something unique which causes them a difficulty not shared by others so impacted. If a proper showing is made, and if there is no resulting adverse impact, the variance would be allowed.

However, the Applicants not only have failed to show anything unique about their property, they admitted there is nothing unique about their property. Nevertheless, understanding that individuals who appear before the Board are not always well versed in the intricacies of the variance standard, the record must be examined to determine if there is anything of any nature which would support their argument. Again, unfortunately, such an examination turns up no support.

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The photographs in the file, and the testimony of Anthony McClune and the Staff Report, reveals nothing about the Applicants' property which is different from any other property in their subdivision. They have a walk-out basement, as do others in the subdivision. They look out over open space, as do others in their subdivision. They are not precluded from constructing a deck, as have others in the subdivision. They are not precluded from constructing a screened-in porch which, while apparently not common in the subdivision, would be allowable. The backyard is not obviously impacted by any sort of easements, encroachments, or unusual topographical conditions. It is virtually flat.

In summary, while the Applicants would like to have the additional living space which a sunroom would provide them, this is, unfortunately, not the proper grounds for the granting of a variance. Being prohibited from constructing an improvement because of an existing setback is not a hardship which can be used to support the granting of a variance. All homeowners must live with setbacks. Variances can be granted under certain clearly defined circumstances. They cannot be granted simply because one cannot do what one wishes to do without it.

CONCLUSION:

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

Date: May 15, 2006

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on JUNE 13, 2006.