

APPLICANTS:
Wayne & Doretha Mitchell

REQUEST: Variance to permit an addition within the required rear yard setback in the R2/COS District

HEARING DATE: February 28, 2007

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5585

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Wayne F. Mitchell, Sr.

CO-APPLICANT: Doretha Mitchell

LOCATION: 2944 Siwanoy Drive – Forest Oaks, Edgewood
Tax Map: 66 / Grid: 3C / Parcel: 200 / Lot: 131
First (1st) Election District

ZONING: R2 / Urban Residential District-Conventional with Open Space (R2/COS)

REQUEST: A variance, pursuant to Section 267-36B, Table V, of the Harford County Code, to permit an addition to encroach the required 35 foot rear yard setback (29 foot setback proposed) in the R2/COS District.

TESTIMONY AND EVIDENCE OF RECORD:

For the Applicants testified Wayne F. Mitchell, Sr., who identified his property as an approximately 7,200 square foot improved parcel located in the Forest Oaks subdivision, Edgewood, Harford County, Maryland.

The property is improved by a two story home with four bedrooms and 3 bathrooms. The Applicants and their two children live on the property, having purchased the property in October 2003. The parcel is also improved by a two-car attached garage.

The Applicants desire to construct a 12 foot by 18 foot four seasons sunroom to the rear of their home. The sunroom would match in style and appearance that of the existing home. It would have white siding, with a roof line complimentary to the existing home.

The Applicants explained that their home is setback approximately 6 feet beyond the front yard setback line. Accordingly, the proposed sunroom cannot be built without encroaching into the 35 foot rear yard setback. The sunroom would, in fact, encroach approximately 6 feet into the setback, which would result in the sunroom being approximately 29 feet from the rear yard lot line whereas the applicable setback is 35 feet.

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Mr. Mitchell testified that the proposed sunroom is similar to others within his neighborhood. Mr. Mitchell described at least one other sunroom in the area that apparently was constructed without a variance. Mr. Mitchell explained that a sunroom that was 18 feet by 6 feet deep, which would be allowable without a variance, would not be a practical room. Mr. Mitchell testified, and a review of the location drawing submitted with the application confirms, that the proposed sunroom would be adjoining the walk-out basement steps to the rear of the Applicants' house. Mr. Mitchell has discussed the requested variance with his neighbors, and no neighbor has expressed any opposition.

For the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune indicated, reiterating the recommendation of the Department, that there is no justification for the granting of the variance. The Applicants' lot is relatively level, and very similar to other lots within both the subdivision and in the Applicants' neighborhood. Mr. McClune explained that no other similar variances had been granted in the neighborhood, and that the Department was concerned that the granting of this variance would create an unfavorable precedent.

The Harford County Department of Planning and Zoning Staff Report, in summary states:

“The Department finds that the subject property is not unique. Most of the dwellings were located the same distance from the road to create a uniform streetscape. The topography and slope of the applicants lot is similar to the other lots along this road. Most of the dwellings along Siwanoy Drive could not construct an addition this large.”

The Staff Report notes that a Permit was issued for a 9' x 15' sunroom, with an 8' x 10' open deck at 2954 Siwanoy Drive. The addition did not require a variance.

No other evidence or testimony was 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:

A review of photographs in the file, marked Attachments 9A-10, indicate that the subject property is an attractive parcel, improved by a two-story single family home with an attached two car garage. The Applicants’ home is located relatively close to the front and side yard lot lines. A review of the subdivision plat in the file indicates that the Applicants’ home is very typical of others in the neighborhood, which consists of approximately 1/5 acre lots, and improved with what appear to be 3 or 4 bedroom, two-story homes.

The Applicants have indicated their home was not set directly on the front setback line. However, this does not appear to actually be correct. The Department of Planning and Zoning indicated that a uniform streetscape exists in the area and that the Applicants’ home was sited similar to others in the neighborhood. Furthermore, the attached two car garage is located, in fact, on the front yard setback line. The front entryway of the home and the left part of the home as one face it, is somewhat removed from the front setback line. However, this is an obvious design element and it certainly cannot be said that the developer or builder was mistaken in its location of the home with relationship to the front yard setback line.

The Applicants’ lot is not a deep lot in relationship to the size of the home. The rear yard of the home, being that portion of the lot from the rear wall of the house to the rear lot line, is only approximately 38 feet deep, 35 feet of which is the actual rear yard setback. Obviously, only a very small addition, if any at all, could be built by the Applicant without violating the rear yard setback..

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However, the Department of Planning and Zoning presented testimony that such a configuration is, in fact, typical of the configuration in the subdivision. The Applicants' property is no different from those other homes in having a heavily restricted rear yard. There is, in fact, nothing unusual about the Applicants' home in relationship to the other homes in the subdivision.

Furthermore, there is no evidence that other variances have been granted, or that other Applicants had encroached within the rear yard setback line. The construction of an addition as proposed by the Applicant, which would be approximately 12 feet by 18 feet in size, would not be similar to others in the neighborhood but would, rather, allow the Applicants to enjoy a feature that other owners cannot enjoy without similar relief.

As a result of these findings, it cannot be found that there is a unique or unusual feature of the property. The property is, in fact, similar to others in the neighborhood. Surely, any practical difficulty which the Applicants suffer is not related to any unusual feature of the property. It is, in fact, related to the Applicants' inability to comply with the provisions of the Harford County Development Regulations. Their difficulty is due to the need to comply with those regulations. Their difficulty is not due to an unusual feature of their property.

It is also important to note that the granting of the variance requested would literally open the door to virtually every other similarly situated property owner in the Applicants' area to request a similar variance. Variances should be granted sparingly, and only for appropriate reasons. Those reasons can only be to alleviate hardship or difficulty resulting from some unusual or unique feature of a property. The Applicants have not presented such a case.

CONCLUSION:

Accordingly, it is recommended that the requested variance be denied.

Date: March 19, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on APRIL 16, 2007.