

**APPLICANT:**  
John Nevins

**REQUEST:** A variance to permit a deck  
within the required rear yard setback  
in the R3/COS District

**HEARING DATE:** March 7, 2007

**BEFORE THE**  
**ZONING HEARING EXAMINER**  
**FOR HARFORD COUNTY**  
**BOARD OF APPEALS**  
**Case No. 5586**

### **ZONING HEARING EXAMINER'S DECISION**

**APPLICANT:** John Nevins

**LOCATION:** 916 Felicia Court, Bel Air  
Tax Map: 41 / Grid: 3A / Parcel: 632 / Lot: 326  
Third (3<sup>rd</sup>) Election District

**ZONING:** R3 / Urban Residential District-Conventional with Open Space (R3/COS)

**REQUEST:** A variance, pursuant to Section 267-36B, Table VI and Section 267-23C(1)(a)(6) of the Harford County Code, to permit a deck to encroach into the 30 foot rear yard setback (26 foot setback proposed) in the R3/COS District.

#### **TESTIMONY AND EVIDENCE OF RECORD:**

John Nevins, Applicant, described his property as a corner lot in the Irwin's Choice subdivision of Bel Air, improved by a townhouse. Mr. Nevins stated that a deck is attached to the second level of the home to the rear. Beneath the deck is a concrete pad.

The Staff Report and photographs in the file demonstrate that the property is attractive, nicely landscaped and well maintained.

Mr. Nevins is before the Board of Appeals as a result of a Violation Notice. However, the Applicant stated, when he purchased the property in October 2003 the deck was in existence and he did not realize it had been constructed without a permit. Unfortunately, the deck impacts the required rear yard setback by approximately 4 feet on one side.

Mr. Nevins believes he is entitled to a variance because his rear yard lot line is actually not parallel with the rear of his house. Instead, the rear lot line is at a fairly acute angle. On the north side of his property the rear lot line is approximately 40 feet from the end of the deck; on the opposite side the lot line is about 26 feet from the end of his deck. No other townhouse in Mr. Nevins' row of eight townhomes is similarly impacted. All other rear lot lines are square to the back of the house. At least five of those other townhomes within his eight unit block also contain decks, none of which are in violation. However, because of the odd rear yard lot line which, in essence, has a corner "cut off", his deck is at least partially in violation.

## **Case No. 5586 – John Nevins**

Mr. Nevins testified that his deck is similar to many others in the neighborhood. It is similar to decks erected and attached to at least five other townhomes within his eight unit block.

Mr. Nevins stated that having to remove part of the deck would cause a practical difficulty; he believes it is not necessary. His neighbors are aware of his requested variance and none has expressed any opposition.

Mr. Nevins acknowledged that he maintains a storage shed behind his property, but on property not owned by him. He agrees, that if granted approval, he will remove the storage shed or move it onto his property.

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

*“The Department finds that the subject property is unique based on the configuration of the lot. The rear angle of the lot is at a sharp angle because of the NRD easement to the rear. Only the southwest corner of the deck encroaches into the setback. The requested variance will not adversely impact adjacent properties or the intent of the code. The deck was existing when the applicant purchased the property”*

There was no testimony or evidence presented 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.*

## **Case No. 5586 – John Nevins**

- 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:**

Based on information contained in the Staff Report, as presented by Mr. Nevins and as shown on the site plan, it appears the Applicant's lot was somewhat oddly configured in order to avoid encompassing any part of the Natural Resource District which is to the rear of the Applicant's property.

While it may be generally wise, from a land use point of view, to avoid including a Natural Resource District within the rear portion of residential building lots, unfortunately Mr. Nevins does not benefit from that policy. Because of the Natural Resource District the rear corner of his lot is cut off. A deck, very common to others in the neighborhood and having regular dimensions, now is found to impact into the rear yard setback because the rear corner of the lot is at a sharp angle.

Furthermore, Mr. Nevins' situation is not of his own making. He purchased the home approximately three years ago with the deck in existence, having been built by a prior owner without a permit.

Accordingly, Mr. Nevins suffers a practical difficulty because of an unusual feature of his lot. His lot has odd dimensions compared to most lots in general, and clearly in comparison to other townhouse lots within his subdivision. Mr. Nevins' practical difficulty is his inability to own and enjoy a deck with normal dimensions, and similar to others within his subdivision and, in fact, throughout Harford County.

The relief requested by Mr. Nevins is the minimum necessary to alleviate his hardship. The granting of the variance will have no adverse impact on any adjoining neighbor or property.

**Case No. 5586 – John Nevins**

**CONCLUSION:**

It is accordingly recommended that the requested variance be granted, subject to the following:

1. The Applicant shall obtain all necessary permits for the deck.
2. The Applicant shall move his shed onto his lot or remove it completely. A permit will be required to relocate the shed.

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.**