

APPLICANTS:
David & Amy McNamee

**REQUEST: Variance to locate
an addition within the required
side yard setback**

HEARING DATE: June 6, 2006

**BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS**

Case No. 5596

ZONING HEARING EXAMINER'S DECISION

APPLICANT: David McNamee

CO-APPLICANT: Amy McNamee

LOCATION: 413 Quaker Bottom Road – Silver Acres, Havre de Grace
Tax Map: 37 / Grid: 3C / Parcel: 118 / Lot: 13
Second (2nd) Election District

ZONING: AG / Agricultural

REQUEST: A variance to Section 267-34B, Table II of the Harford County Code, to permit an addition within the required 20 foot side yard setback (2 foot setback proposed, 4 foot average), in the Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

Co-Applicant, David McNamee, described the subject property as a 0.92 acre parcel improved by a single family, ranch type dwelling and a pole shed. The Applicants and their son live on the subject property, which they purchased in 2000.

Mr. McNamee explained that he and his wife plan to construct a two-car garage on the northeasterly side of the existing home, which would be to the left as one were looking at the home from Quaker Bottom Road. Furthermore, they intend to construct a second story on the right side of the home. This addition would overhang the back and side of the home by approximately 2 feet. Furthermore, they plan to install a new front porch along the Quaker Bottom Road side of the house. However, the construction of the porch and the second story overhang will require a variance to the side yard setback requirements of the Development Regulations.

Mr. McNamee explained that the house, when originally constructed, was built too close to the right side lot line, being the southwesterly side. The home is in fact approximately 7 feet from the southwest lot line which means that at the time it was built it violated the then existing side yard setback requirement by approximately 13 feet.

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Mr. McNamee explained that he had inspected the original building permit file and had determined the home was planned to be built in the middle of the lot, with no side yard impact. Instead, the home was improperly located. Mr. McNamee was not the builder of the home, having purchased it subsequent to its original construction.

Furthermore, the home is set somewhat at an angle to the southwesterly lot line. While, at its closest point, it is within 7 feet of the lot line, its farthest location is much farther from the lot line so that the average distance from the lot line to the side wall of the home is approximately 9 feet.

The front porch proposed by the Applicants cannot be constructed without a variance as, even though it will be directly across the front of the house, it will be located partly within the required 20 foot setback due to the original improper location of the house.

Mr. McNamee explained that the second story must overhang the side of the house by approximately 2 feet due to the relative smallness of the footprint of the house, and the design for the second story. The location of the stairwell limits the size of the bedrooms to the right or southwest side of the second floor. Without the 2 foot addition the rooms would be substandard in size. Mr. McNamee stated that every neighbor surrounding his property has expressed his or her lack of opposition to the request.

Next for the Applicant testified Tom Marron, who owns property adjoining the Applicant to the southwest side. Mr. Marron's property would be most directly impacted by the side yard variances, if granted. Mr. Marron expressed his support for the variance. He explained that the Applicants are good neighbors, and he had no objection to the request.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune confirmed that the house as originally built did not conform to its building permit (in the file as Attachment 12), and was, in fact, improperly located within the side yard setback. The house itself is a relatively small house. Other homes in the neighborhood are larger. The proposed addition would bring the house into closer conformity to the size of other homes around it.

Mr. McClune explained that the average existing side yard setback on the southeasterly side, is approximately 9 feet. Even with the granting of the variance the average side yard setback would remain around 9 feet.

Mr. McClune sees no adverse impact to the neighborhood. In fact, the impact on the setback should not be noticeable to any adjoining property owner or neighbor.

The Staff Report notes that other homes in the subdivision were located in a manner that would allow for future additions. The Applicants' home, due to its improper location, is limited in its ability to be improved without the requested variances.

No evidence or testimony was given 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.”*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The subject of this application is a relatively modest size home in the Silver Acres subdivision located off Quaker Bottom Road in Havre de Grace, Maryland. The Applicants desire to make a relatively common improvement to their home by adding additional floor space, a garage, and a front porch. Unfortunately, the home was improperly located on the lot when constructed in 1975. The building permit, as discussed by a representative of the Harford County Department of Planning and Zoning, clearly required the home to be located more toward the center of the lot. Instead, it was unnecessarily located at an angle to Quaker Bottom Road, and well within the then existing 20 foot side yard setback.

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The Applicants, who purchased the property in the year 2000, are unfortunately saddled with the burden of attempting to build around the errors which were made in 1975.

What the Applicants propose is nothing more than a substantial, but not unusual, improvement to their home. A garage can only be located on the northeast side of the home due to the closeness of the home to the southwesterly side lot line. The second story addition must be extended approximately 2 feet over the footprint of the first floor in order to provide adequate, although certainly not extravagant, interior space. A modest porch is also proposed which would impact the side yard setback due to the improper location of the house on the lot.

The Applicants clearly suffer from an unusual feature of their property, a feature which is not experienced by others within the neighborhood, and one which is experienced by very few people within Harford County. That unusual feature is a home which, when built, grossly failed to comply with applicable setback requirements. This has created a hardship to the Applicants in that they are not able to add a common addition to their home, an addition which others in the neighborhood are able to construct, and which many others in Harford County enjoy.

The relief requested by the Applicants, which is a relatively modest, albeit additional, impact to the side yard setback, is minor in nature, would have no observable impact on any neighboring property owner, will have no adverse impact on the neighborhood or on property values within the area and, indeed, should improve the value of the subject property and the value of the neighborhood in which it is located. The relief requested is the minimum necessary to alleviate the hardship suffered by the Applicants.

CONCLUSION:

For the above reasons, it is recommended that the requested variance be granted, subject to the Applicants obtaining all necessary permits and inspections for the construction of the additions.

Date: June 25, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on JULY 24, 2007.