

APPLICANT:
Moran/Luther LLC

**REQUEST: Variance to permit a dwelling
within the required front yard setback
in the R2 District**

HEARING DATE: August 29, 2007

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

Case No. 5612

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Moran/Luther LLC

LOCATION: 3414 Philadelphia Road, Pomeroy Manor, Abingdon
Tax Map: 62 / Grid: 3B / Parcel: 862 / Lot: 63
First (1st) Election District

ZONING: R2 / Urban Residential District

REQUEST: A variance, pursuant to Section 267-23(A)(5) of the Harford County Code,
to permit a dwelling to maintain a minimum front yard setback of 40 feet (60 foot setback required), in the R2 District with NRD adjustment.

TESTIMONY AND EVIDENCE OF RECORD:

Thomas Scannell, Project Manager for the Applicant, described Moran/Luther LLC's request for a variance to permit a dwelling to maintain a minimum 40 foot front yard setback when a 60 foot setback is required in the R2/Urban Residential District, with a Natural Resource District (NRD) Development Adjustment. Mr. Scannell has 12 years experience as a project engineer.

Mr. Scannell explained that the subject lot is Lot No. 63, which contained a building that was demolished after the plat was recorded and approved. The demolished building had faced Philadelphia Road (MD Route 7). The recorded plat is accepted as Applicant's Exhibit No. 1.

Case No. 5612 – Moran/Luther LLC

The plat records the subject property as Lot 63 of the Pomeroy Manor Subdivision. Mr. Scannell explained that the lot was designed to accommodate the existing home in the Pomeroy Manor Subdivision. The subject property is rectangular in shape and contains approximately .21 acres. Mr. Scannell explained that there are several lots within the Pomeroy Manor Subdivision which have frontage on Philadelphia Road. Philadelphia Road is designated as an arterial road and the lots abutting the road are required to maintain a 60 foot front yard setback. The subject property, Lot 63, was recognized as an existing non-conforming structure when the development was approved. The dwelling on Lot 63 was demolished in 2004 because the property had become unusable.

Mr. Scannell explained that they are unable to build a home on the lot without the variance. A 60 foot front yard setback is required. The proposed location of the home would have a 40 foot front yard setback, requiring a variance of 20 feet. Without the variance, they will be unable to use the lot. The proposed home would be in line with two other houses in the Pomeroy Manor Subdivision. They would have the same value and appearance as the other homes. There have been no objections by any of the surrounding homeowners.

Mr. Scannell provided compelling evidence that the property is unique. The property was created around an existing dwelling which was originally intended to remain on the parcel. The original dwelling was located within the 60 foot front yard setback. The building lot for Lot 63 is approximately 23 feet deep by 60 feet wide when all setbacks are applied. This creates a narrow building envelope which cannot accommodate a dwelling similar to those on the adjacent lots within Pomeroy Manor. The requested 20 foot variance will allow the home to sit farther back from Philadelphia Road than the original dwelling. In addition, his testimony also indicated that there would be no adverse impact if the requested variance is granted, and it would be similar in value and appearance to the other homes.

Case No. 5612 – Moran/Luther LLC

Next for Harford County Department of Planning and Zoning testified Shane Grimm. Mr. Grimm testified the property is located on the west side of Philadelphia Road. The property is known as Lot 63 of the Pomeroy Manor Subdivision. The property is located within the Development Envelope. The subject property is rectangular in shape and contains approximately .21 acres. Pomeroy Manor was developed using the Natural Resource District (NRD) Development Adjustment. The adjustment allowed the developer to utilize the design standards for the R3/Urban Residential District. The lots surrounding the subject property have been developed with new, single-family dwellings over the past several years.

There are several lots within the Pomeroy Manor Subdivision which have frontage on Philadelphia Road. Philadelphia Road is designated as an arterial road and the lots abutting the road are required to maintain a 60 foot front yard setback. The subject property was developed around the existing dwellings. The Department recognized the dwelling on Lot 63 as an existing non-conforming structure. The dwelling was subsequently demolished in 2004. If a non-conforming structure is removed, the replacement must be a conforming structure.

Mr. Grimm testified that the property is unique. The original dwelling was located within the 60 foot front yard setback and was recognized as a non-conforming structure that could continue to exist. The building envelope for Lot 63 is 23 feet deep by 60 feet wide when all the setbacks are applied. The building envelope cannot accommodate a dwelling similar to the other lots in Pomeroy Manor. The requested 20 foot variance will accommodate the dwelling on the lot. The house would be located significantly further back from Philadelphia Road than the original dwelling. Mr. Grimm explained that the location of the home will be safer than the previous structure. The dwelling proposed is similar to others in the Pomeroy Manor Subdivision and is consistent with them.

The Department believes there will be no adverse impact if the requested variance is granted.

No evidence or testimony was given in opposition.

Case No. 5612 – Moran/Luther LLC

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 Applicant has made a convincing showing that the lot, located within the Pomeroy Manor Subdivision, is unique. The site plan shows Lot 63, which is approximately 23 feet deep by 60 feet wide when all the setbacks are applied. This created a narrow building envelope that cannot accommodate a dwelling similar to those on the adjacent lots.

Case No. 5612 – Moran/Luther LLC

The Applicant has demonstrated that, without the variance, the building lot will be unusable. The proposed dwelling on the lot is similar to others in the subdivision and will be attractive in appearance and design, and will have no adverse impact upon any adjoining property owner.

It is further found that the variance is necessitated by the unique features of the property, which would prohibit the Applicant from building a dwelling on the lot unless granted the variance requested. The variance itself is the minimum relief necessary in order to alleviate the hardship experienced by the Applicant.

CONCLUSION:

It is, accordingly, recommended that the requested variance be granted, subject to the Applicant obtaining all necessary permits for the construction of the dwelling.

Date October 1, 2007

Michael H. Daney
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on October 29, 2007.