

**APPLICANTS:**  
**Thomas & Mary Ditonno**

**REQUEST:** A variance to permit a sunroom within the required rear yard setback in the R2 District

**HEARING DATE:** November 14, 2007

**BEFORE THE**  
**ZONING HEARING EXAMINER**  
**FOR HARFORD COUNTY**  
**BOARD OF APPEALS**  
**Case No. 5620**

**ZONING HEARING EXAMINER'S DECISION**

**APPLICANT:** Thomas Ditonno

**CO-APPLICANT:** Mary Ditonno

**LOCATION:** 1401 Coventry Court – West Riding subdivision, Bel Air  
Tax Map: 49 / Grid: 4C / Parcel: 807 / Lot: 119  
Third (3<sup>rd</sup>) Election District

**ZONING:** R2 / Urban Residential

**REQUEST:** A variance pursuant to Section 267-36B, Table V, of the Harford County Code, to permit a sunroom within the required 40 foot rear yard setback (24 foot setback proposed), in the R2 District.

**TESTIMONY AND EVIDENCE OF RECORD:**

For the Applicants testified Alan Gibbon, III, who identified himself as the son of the Applicant, Mary Ditonno. The subject property was described as a one-third (1/3) acre parcel located in the West Riding section of Bel Air. The parcel is zoned R2/Urban Residential, and is improved by a brick and frame split level dwelling, with an attached one-car garage and a wood deck to the rear of the home. According to the Staff Report the property is well maintained.

Mr. Gibbon explained that the Applicants wish to expand the width of the existing deck and enclose it in order to make a sunroom. The deck is now approximately 16 feet wide. It is to be removed and replaced with a 30 foot wide, roofed deck. The deck and surrounding patio were constructed at the time the house was originally built.

Mr. Gibbon explained that the house was misaligned on its lot at the time of its construction and that the house was originally located improperly within the then existing rear yard setback. The house is located as close as 28 feet from the rear yard setback. The deck was, accordingly, also located within the rear yard setback. The existing deck is within 26 feet of the rear yard property line.

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The Applicants do not desire to increase the depth of the deck, merely its width. However, by increasing its width the deck will, because of the odd alignment of the house on the lot, encroach into the rear yard setback by an additional 2 feet. Accordingly, the Applicants are requesting a 16 foot variance to the required 40 foot rear yard setback.

Mr. Gibbon explained that no neighbor has objected to the request. Landscaping and fencing exist on the property; therefore, the modification to the deck will not be clearly apparent to any neighbor.

Mr. Gibbon explained that the deck is now in violation. This was caused by the original owner, not the present Applicants who have only owned the property for about two years. Furthermore, the house itself is located further back from the front yard setback line than is necessary, it is misaligned on the lot, and it is substantially 'off center'. Mr. Gibbons explained that if the house had properly been located on the lot, that is, at the front yard setback line and centered on the lot, the extent of the requested variance would not be necessary. Because of the way the house sits on the lot, no improvement to the rear of the house can be made without a variance.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune verified that the Applicants' dwelling is set approximately 13 feet behind the front yard setback line. In fact, the house, as indicated by Mr. Gibbon, does indeed substantially encroach into the rear yard setback. The house was apparently mis-located on the lot at the time it was originally constructed.

Because of the increase in the width of their deck to one side, the deck will encroach approximately 2 feet more into the rear yard setback than it does at present. Accordingly, the impact will go from 14 feet to 16 feet.

Mr. McClune also notes that the property has unusual topography in that it slopes rather drastically upwards to the rear of the lot. Because of the topography and existing vegetative screening and fencing there is no need, in the Department's opinion, to screen the sunroom.

Mr. McClune believes that the circumstances and characteristics of the lot are sufficient to justify the granting of the variance. No adverse impact will result. The sunroom, once constructed, will be similar to others within the neighborhood. The Department recommends approval of the variance without conditions.

No testimony or evidence 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 Applicants, who have owned the subject property for about two years, are faced with a quite unusual situation. The existing, relatively large, deck to the rear of their home has, since the time of its construction, substantially encroached into the 40 foot required rear yard setback. Furthermore, the house itself encroaches within the rear yard setback.

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A review of the site plan (Exhibit 1), quite clearly demonstrates that the house was misaligned on the lot. This one and a half story dwelling is some 13 feet behind the front yard setback line and is quite substantially located, or skewed, to the left side of its lot. If the house had been located on the front yard setback line, as it should have been, and if it was located more to the center of the property, as it should have been, a variance of the extent requested would not have been required.

The Applicants' house and deck already encroach within the rear yard setback. The house itself encroaches some 12 feet. The existing deck encroaches 14 feet, and the new deck will encroach 16 feet. It is quite apparent that without a variance no improvement of any nature could be constructed to the rear of the house. This creates a practical difficulty for the Applicant in that they are unable to improve their property as have others in the neighborhood and throughout Harford County.

The variance requested is the minimum necessary to afford the Applicant the relief required. There is no adverse impact found. The requested variance is not caused by the actions of the Applicants but, rather, by their predecessors in title. Accordingly, it is recommended the variance be granted.

**CONCLUSION:**

It is, accordingly, recommended, as set forth above, that the requested variance be granted, subject to the Applicants obtaining all necessary permits and inspections for the deck and sunroom.

Date: December 10, 2007

ROBERT F. KAHOE, JR.  
Zoning Hearing Examiner

**Any appeal of this decision must be received by 5:00 p.m. on JANUARY 11, 2008.**