

APPLICANTS:
Sandeep & Jaspreet Singh

REQUEST: Variance to permit a deck
within the 100 foot conservation buffer in
the Rural Residential District

HEARING DATE: August 17, 2011

BEFORE THE
ZONING HEARING EXAMINER
HARFORD COUNTY
BOARD OF APPEALS

Case No. 5745

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: Sandeep & Jaspreet Singh

LOCATION: 1322 Martin Meadows Drive, Fallston
Tax Map: 54 / Grid: 1F / Parcel: 27
Third (3rd) Election District

ZONING: RR / Rural Residential District

REQUEST: Variance, pursuant to Section 267-46.1B(5)(b) of the 1982 Code, to allow a deck to encroach into the minimum 100 foot conservation buffer in the Rural Residential District.

TESTIMONY AND EVIDENCE OF RECORD:

The subject parcel is located in the Martin Meadows subdivision of Fallston. The parcel is approximately 1.7 acres in size, and is improved by a two-story, new Colonial type dwelling, with attached garage.

The Applicants have no other improvements on the property and wish to construct an approximately 35 feet by 27 feet deck to the rear of their house. This would result in an encroachment into a 100 foot deep conservation setback and, therefore, this variance is requested.

For the Applicants testified Mike Trimble, who identified himself as an agent for Richmond American Homes of Maryland, the builder of the Applicants' residence. Mr. Trimble stated that the subject parcel slopes sharply up from Martin Meadows Drive and, as a result, has a driveway with approximately a 13% pitch. Because of the severe slope of the property, the house was located somewhat farther back from the road than would normally be the case. A review of the site plan indicates that, in fact, the front of the house is located about 56 feet from its front lot line, which is significantly more than the required front yard setback. Furthermore, according to Mr. Trimble, the property is encumbered by a septic field and septic reserve area to the east of the property which eliminates that portion of the property as a potential site for an expanded deck.

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According to Mr. Trimble, the Applicants wish to construct a modestly sized deck, one that is fully in keeping with other decks in the neighborhood, to the rear of the house, as that is the location of rear access doors. However, the lot is significantly encumbered, according to Mr. Trimble, by a 100 foot conservation setback which, because of the location of the house relatively far off Martin Meadows Drive and given the location of the septic reserve area, results in almost no available land for the construction of any improvement on the lot without a variance. The requested variance would result in an impact to the conservation easement of about 10 feet.

Next testified Sandeep Singh, Co-Applicant. Mr. Singh described the proposed deck as being constructed with Trex and partially covered with vinyl. It will be a total of between 900 – 1,000 square feet in size, and will be somewhat smaller than most decks in this subdivision. All surrounding neighbors whom the Applicants approached support the request, and he has received no indication from any neighbor of any objection. Mr. Singh believes no negative impact will result from the construction of the deck.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune, Deputy Director. Mr. McClune and the Department believe that the subject property is unique. A significant slope exists in the front of the property upward to the house. This caused the house to be setback significantly more than would normally be the case. As a result, a diminished buildable area now exists on the side and rear of the home. This situation is exacerbated by a septic reserve area to the east of the house and the existence of the 100 foot conservation easement to the rear. The conservation easement comes to within a few feet of the back wall of the house.

Mr. McClune also stated that the lot is relatively shallow and is oddly configured in comparison to other lots in the area. Mr. McClune and the Department believe that granting the variance would have no adverse impact and is justified by the unique circumstances of the parcel.

No testimony or evidence 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 267-63.H (Chesapeake Bay Critical Area Overlay District, variances), 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.”*

Section 267-46.1B(5)(a) of the 1982 Harford County Zoning Code provides:

“(5) Setbacks.

- (a) *A minimum one hundred (100) foot setback shall be established along existing public roads (measured from the edge of the right-of-way) and along the adjacent property boundaries, and waterways. This setback may be reduced to fifty (50) feet from the edge of the right-of-way and along the adjacent property boundary if the area within the fifty (50) feet contains existing forest and that forest is retained and designated as an undisturbed forest buffer area and, if necessary supplemental landscaping is provided to adequately screen the proposed development from the public road. Lots may be located within the fifty (50) foot setback provided that no structures are located within this area.”*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants present a persuasive case that, due to a combination of unique features of their property, they suffer practical difficulty in the use of their property. The Applicants own a relatively large home located on a 1.7 acre lot which, because of various topographical and legislatively imposed conditions, prohibits them from using virtually any of the otherwise

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available space for improvements. The lot slopes up from the road, which results in the house being set farther back than what would normally be the case. The septic reserve area impacts the east side of the home and the left side of the home has little available area for construction of a deck or other improvements. The rear of the home is almost fully impacted by a 100 foot deep conservation district.

The Applicants have made no improvements to the property other than their residence. They now wish to construct a relatively modest deck, one smaller than most in their subdivision, but one which would impact the 100 foot conservation easement by almost 10 feet. This slight encroachment will not affect the conservation district, and will have no adverse impact on their neighbors or the neighborhood.

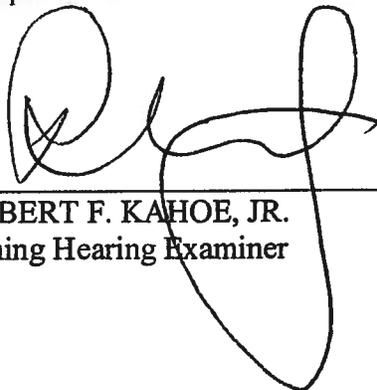
Without the variance the Applicants would be deprived of a use of their property which others, throughout the County, enjoy – that is, a deck situated to the rear of the house, at a location at which rear entry doors are already built, obviously in anticipation of the construction of such a deck.

The difficulty experienced by the Applicants is easily alleviated by the granting of this relatively modest variance, which is the minimum relief necessary to eliminate the Applicants' difficulty.

CONCLUSION:

Accordingly, it is recommended that the requested variance be granted to allow the 100 foot conservation easement to be impacted, as requested by the Applicants, subject to the Applicants obtaining all applicable permits and inspections.

Date: September 13, 2011



ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on OCTOBER 11, 2011.