

APPLICANT:
Kenneth Kluge

REQUEST: Variances to locate an accessory structure larger than 50% of the habitable space of the principal structure in the Agricultural District

HEARING DATE: September 21, 2011

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS

Case No. 5748

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Kenneth Kluge

LOCATION: 1952 Pleasantville Road, Forest Hill
Tax Map: 39 / Grid: 4E / Parcel: 388
Fourth (4th) Election District

ZONING: AG / Agricultural

REQUEST: Variance, pursuant to Section 267-27C(1) of the Harford County Code, to allow an accessory structure to be greater than fifty percent (50%) of the square footage of habitable space of the principal structure, in the Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

The subject parcel is 3+ acres in size, located outside of Forest Hill, Maryland. The parcel is improved by an existing 4-bedroom, 2-1/2 bath home in which the Applicant and his family reside. Also on the property is a Black Bear shed, which is properly permitted, and a 2 story garage which is the subject of this application. A garage is also located on the property, which the Applicant indicated was formerly the Pleasantville Post Office.

The structure which is the subject of this application was constructed by the Applicant on an existing foundation. The structure, which is 2 stories in height, as described by the Applicant has an upper floor area of 50 feet by 50 feet, and a first floor area of 50 feet by 40 feet. As can be seen by photographs contained in the file, the structure has one garage door, windows, and a front door for pedestrian access. The second floor overhangs the first floor along the front of the building. The building is of frame and block construction. The Applicant indicated that no plumbing is installed in the barn. The barn has electric by virtue of an extension cord from the residence. The barn is used for storage. The Applicant testified that he had been working on the barn for about 15 years and has had no complaints. In fact, it is screened from adjoining properties by existing, mature trees.

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The file verifies the Applicant's testimony that he has had no complaints about the barn. A number of letters from neighbors indicating that they have no opposition to the requested variance are also in the file.

The Applicant testified that the principal dwelling on the property is about 2,000 square feet in size. Accordingly, the barn is significantly greater in size than the existing dwelling and, accordingly, is in violation of the 50% size limitation for accessory structures found in Section 267-27C(1). This variance is, accordingly, requested.

The Staff Report from the Harford County Department of Planning and Zoning indicates that the area in which the subject property is located is a mix of older, established subdivisions with both large and small lots. Some commercial uses are also in the area. The Staff Report states that the barn is about 4,500 square feet in size, and the Maryland State Department of Assessments and Taxation database shows that the existing residential dwelling is 1,888 square feet in size. The parcel, according to the Staff Report, is flat to moderately sloping and contains areas of large, mature trees and maintained lawn.

The Staff Report indicates that other violations on the subject property were abated by the owner.

The Staff Report concludes, as follows:

"The Applicant has constructed a large accessory structure on the subject property without a building permit. The accessory structure exceeds the allowable size for residential accessory structures. The Applicant has not provided any justification related to the uniqueness of property or practical hardship. The Department does not find that the subject property is unique or that the Applicant suffers a practical hardship that would warrant the granting of the requested variance."

The Department recommends that the requested variance be denied.

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 267-41.1.H., 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."*

The Applicant is requesting a variance to Section 267-27C(1) which states:

"In the AG, RR, R1, R2, R3, R4 and VR Districts, the accessory structure shall neither exceed fifty percent (50%) of the square footage of habitable space or 1,000 square feet, whichever is greater. The height of the accessory structure shall not exceed the height of the principal structure."

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Under the Harford County Development Regulations, accessory structures on residentially used lots are typically not allowed to exceed the size of the principal dwelling by more than fifty percent (50%). Accordingly, given a typical 2,000 square foot home, an accessory building, such as a freestanding garage, would be allowed to have up to 1,000 square foot of interior floor space. That would result in a fairly large building, certainly one which is more than adequate for most homeowner uses. Furthermore, such a requirement provides for uniformity in residential districts which tends to maintain the residential character of an area.

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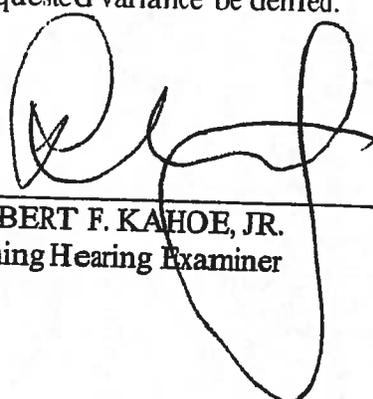
Unfortunately for the Applicant, he does not slightly exceed the fifty percent (50%) square footage limitation which, perhaps, could be justified. He exceeds the size of his principal dwelling by well over two hundred percent (200%). There is simply no justification or rationale given for such an excessively sized structure, nor can one be found. Obviously, if the Applicant had attempted to obtain a permit before beginning construction he would have learned early on of the requirements with which he must comply and have been spared the expense which he has incurred.

No suggestion of uniqueness or topographical conditions which would somehow justify the Applicant's request for a variance has been argued, nor has any resulting practical difficulty or hardship been suggested other than the obvious expense to be incurred in conforming this situation to Code requirements. This is a fairly standard, residentially used lot, one on which the Applicant, for his own purposes, constructed an illegal accessory use. While clearly a financial hardship will result upon the Applicant's removal of such a structure, that hardship is completely of his own making and cannot be utilized as the basis for the granting of the requested variance.

CONCLUSION:

It is accordingly recommended that the requested variance be denied.

Date: December 21, 2011



ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on January 23, 2011.