

APPLICANTS:
Anthony & Vonda Horseman

BEFORE THE
ZONING HEARING EXAMINER
HARFORD COUNTY
BOARD OF APPEALS

REQUEST: Variance to permit an attached garage within the required side yard setback in the R3 Urban Residential District

HEARING DATE: September 21, 2011

Case No. 5750

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: Anthony & Vonda Horseman

LOCATION: 202 Princeton Lane, Bel Air
Tax Map: 40 / Grid: 3E / Parcel: 335
Third (3rd) Election District

ZONING: R3 / Urban Residential District

REQUEST: Variance, pursuant to Sections 267-55B(1) of the Harford County Code, to permit an attached garage within the required 6 foot side yard setback (1.1 foot setback proposed), in the R3/Urban Residential District.

TESTIMONY AND EVIDENCE OF RECORD:

The subject property is a less than 2/10ths of an acre parcel located in the Marywood subdivision, just north of Bel Air. The parcel is improved by a two-story, Colonial dwelling and numerous improvements, including: in-ground swimming pool and surrounding concrete deck; additional stamped concrete pad; shed; surrounding fence; a rear covered porch; a front covered porch; 9 foot by 12 foot shed; and an attached two-car garage which the Applicants have constructed over the existing driveway, and which is the subject of this application.

Mr. Horseman relates that he has been forced to relocate a fence along his rear property line by moving it inward. He only recently discovered that a portion of what he considered to be his lot is in fact, owned by another, and the Applicant as a result had to move the fence. According to the boundary and location survey submitted by the Applicant it appears the fence was brought in about 3 feet on the westerly side of the lot and approximately 17 feet on the easterly side of the lot. This necessitated moving the shed which was in that area. However, this has caused the Applicants some difficulty with storage on their property. According to their application;

“We are being required to move a shed and fence that will reduce our yard by 1/3 compared to what we were previously led to believe was our property. This increases the need for storage of our outside items.”

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As a result, says the Applicant, he built a two-car garage having dimensions of approximately 19 feet by 19 feet, along and adjacent to the easterly side of the house, over the existing parking pad. The two-car garage now comes to within 1.1 feet of the adjoining property line, which violates the minimum 6 foot side yard setback requirement.

The Applicant further suggests that due to financial reasons he is forced to work on his cars at his home and the garage gives him a location to do so. Also, due to financial reasons, having to move the garage would cause a financial hardship. The Applicant stated he is struggling, that his pay has been recently cut, and denial of the variance would cause further financial difficulties.

The Applicant believed that by locating the garage on the existing parking pad he would not be in violation of the Zoning Code. Accordingly, thinking there was no harm, he built the garage without a permit. While there is electric in the garage, he uses an existing outlet which was originally an outdoor outlet next to his kitchen door. Having indoor workspace allows him to work on his vehicles. He only works on his vehicles and not others. His garage gives him additional space as he is losing storage space by the reduction of his lot size. In summary, the Applicant said that he would suffer a financial hardship if the variance is not approved.

Next for the Applicant testified Gary Webster, the next door neighbor at 200 Princeton Lane. Mr. Webster lives on the side of the Applicant's property on which the garage is located. Accordingly, the garage comes within approximately 1 foot of the common property line. Mr. Webster indicated the Applicant allows him to use the garage to change oil and work on his car. The Applicant lost significant lands in the back of his lot because of the lot line issue. Mr. Webster believes the garage looks fine aesthetically and he has no concerns. He does not feel that the garage is too close to his property.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune, Deputy Director. Mr. McClune stated that the subject parcel is very similar to other lots within the Marywood subdivision. While the Applicant has been cooperative, there is presently substantial utilization of the Applicants' property and numerous other lots exist in the development that are very similar to the Applicant's lot. Accordingly, it cannot be found that the Applicants' property is unique or different in any way.

The Department of Planning and Zoning's Staff Report states:

“The Applicants have constructed an attached garage on the subject property without a building permit. The attached garage encroaches into the 6 foot (20 foot total) minimum side yard setback. The Applicant has not provided any justification related to the uniqueness of the property or practical hardship. The Department finds that the subject property is not unique. The configuration and topography of the property is similar to other lots within this neighborhood.”

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No testimony or evidence was given in opposition.

APPLICABLE LAW:

Harford County Code Section 267-55B(1) provides:

“Minimum lot area, area per dwelling or family unit, building setback from adjacent residential lot lines, lot width, front, side and rear yard and maximum building height, as displayed in Tables 55-1 through 55-4.3, shall apply, subject to other requirements of this Part 1.”

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:
 - (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.”*

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FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Contrary to the Applicants' assertions of losing approximately one-third of their lot because of a lot line dispute, the Applicants' boundary and location survey (Attachment 3), indicates the Applicants have lost, very roughly, approximately 450 square feet of their approximately 4,000 square foot lot. It is, further, difficult to see how the Applicants would have lost storage space as a result as the shed has, in fact, been relocated on the lot, nor were any other of the existing improvements significantly diminished or impaired.

The Applicants ultimately rely on a financial hardship argument in support of the requested variance. Mr. Horseman states, firstly, that he will suffer a loss if he is forced to move the garage. Of course, it is most likely that he will, but at the same time, simply attempting to obtain a permit to build the garage in the first place would have eliminated that problem.

Furthermore, it is difficult to understand how one could not at least question a decision to build an attached garage to within 1.1 feet of the property line. At the very least, normal prudence would have dictated some investigation by the Applicant before he undertook the work necessary to construct a relatively large addition, one so close to his property line, and obviously not otherwise found in the neighborhood.

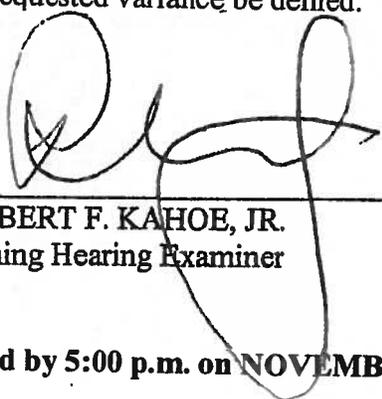
The argument that the Applicant believes that he could construct the garage over the existing parking pad without a permit is totally without merit. That argument, while possibly unique, has no substantiation or merit whatsoever. In short, there is no reason for one to think that constructing a building over a parking pad is somehow allowed without a permit.

The Applicant has an attractive property with attractive improvements, except for the garage, which sticks out like the proverbial "sore thumb" in this well and long-established neighborhood. The Applicants' property is not unique nor does the Applicant present any cogent argument that it is unique. He suffers no hardship not of his own making.

CONCLUSION:

Accordingly, it is recommended that the requested variance be denied.

Date: October 28, 2011



ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on NOVEMBER 30, 2011.