

DIANE Y. & VARNER L. PADDACK  
929 Oak Hill Avenue  
Hagerstown, MD 21742

APPEAL NO. AP2006-094

**Appellants**

OPINION

This action is a request for a variance from the minimum 40 feet rear yard setback to 39.2 feet for a 2 story dwelling currently under construction (Terrace Hills Section C Lot #8). The subject property is located at 12901 Lance Circle, Hagerstown, MD, is owned by the Appellants, and is zoned Residential, Urban.

A public hearing was held before a full Board on July 19, 2006. Corey's Construction offered evidence and testimony in support of the appeal. Neither opposing testimony nor evidence was presented to the Board.

FINDINGS OF FACT

The following findings of fact are made by the Board, based upon the testimony given and all data and other evidence presented, and upon a study of the specific property involved, as well as the neighborhood:

1. Appellants are constructing a 2-story dwelling on the subject property.
2. The dwelling is currently under construction.
3. An error resulted in this request for a ten-inch variance.
4. The property is oddly-shaped.

5. Received and filed with the Board was a memorandum from Kathy A. Kroboth, Washington County Zoning Coordinator, advising that the appeal is consistent with the Comprehensive Plan.

## RATIONALE

This Board has authority to grant a variance upon a showing by the Appellant of practical difficulty or undue hardship. Sections 25.2(c) and 25.56, Zoning Ordinance for Washington County, Maryland. "Practical Difficulty" may be found by the Board when: (1) strict compliance would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome; and (2) denying the variances would do substantial injustice to the applicant and a lesser relaxation than that applied for would not give substantial relief; and (3) granting the variance would observe the spirit of the Ordinance and secure public safety and welfare. Section 25.56(a).

The subject request arises due to an error, the correction of which would impose an unnecessary burden upon Appellant to alleviate a 10-inch encroachment. No lesser variance is available as dwelling is under construction, and the grant of the relief requested does not thwart the intent of the Ordinance. No evidence was presented that the proposed use was incompatible with the neighborhood; disruptive of neighbors' quiet enjoyment of their properties; detrimental to surrounding property values; generative of excessive odors, dust, gas, smoke, fumes, vibrations, or glare; generative of traffic that would exceed the capacity of existing infrastructure; or that the proposal was an inappropriate use of land or structure.

Based upon all of the testimony and evidence presented, this Board finds that the subject request does not adversely affect the public health, safety, security, morals, or general welfare, nor does it result in dangerous traffic conditions, or jeopardize the life and property of neighborhood residents. Accordingly, for the reasons set forth herein, this appeal is hereby GRANTED this 18<sup>th</sup> day of August, 2006.

By: Spence Perry, Chair