

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

JOSEPH F. & JEAN L. CHOJNACKI
14420 Shelby Circle
Hagerstown, MD 21740

Appeal No. AP2007-054

Appellants

OPINION

This action is a request for a variance from minimum 40' rear yard setback to 31' for the construction of a 14' x14' screened deck with roof. The subject property is located at 14420 Shelby Circle, Hagerstown, MD 21740, is owned by the Appellants, and is zoned Residential, Multi-Family.

A public hearing was held before a full Board on July 11, 2007. The Appellants 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. The Appellants want to add a screened 14'x14' deck with a roof to their residence.
2. The subject property is located amongst a residential subdivision and is bordered by agricultural property to the rear.
3. Other properties in the neighborhood are improved with decks.
4. 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, and we find that the proposal is compatible with the neighborhood.
5. No opposition was presented to this request.

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 Appellants have met their burden of demonstrating that strict compliance with the Ordinance would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome. The proposed deck will not be obtrusive or incompatible with the neighborhood. Decks are a natural and commonplace accessory use to a residence. No evidence was presented that showed 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. Therefore, it appears to us that the grant of this variance upholds the spirit of the Ordinance and does not harm the public safety or welfare.

Based upon all of the testimony and evidence presented, this Board finds that the requested special exception will not have an adverse effect upon the public health, safety, security, morals or general welfare, nor would it result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. Accordingly, for the reasons set forth herein, this appeal is hereby GRANTED this 9th day of August, 2007.

BOARD OF APPEALS

By: Bert Iseminger, Chair