

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

MERRY STINSON & DONALD BRINSER  
Appellants

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Appeal No. AP2008-044

OPINION

This action is an appeal charging administrative error for the decision by the Zoning Administrator to not require a variance from the minimum 100' setback from the northern property line to 0' and the minimum 100' setback from the eastern side of property line to 60' for an existing 16-year old deck. The subject property is located at 21400 Leiter Street, Leitersburg, Maryland, is owned by the Richard and Tammy Hummer, and is zoned Rural Business-Existing.

A public hearing was held before the Board on September 10, 2008. The Appellant offered evidence and testimony in support of the appeal. No opposition was presented to this appeal.

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. Appellant charges administrative error for the Zoning Administrator's decision to not require the owner to apply for a variance for an existing deck (*Deck*) built in 1992 that encroaches into the setback limits.
2. The structure on the property is a 19<sup>th</sup> Century building that houses Leitersburg Tavern and has for many years.
3. The Deck is made of lumber, extends from the first floor of the Tavern, and provides seating and standing area for customers.
4. There was a 6'x36' two-story covered porch (*Old Porch*) that has been replaced with a 16'x36' two-story covered porch (*New Porch*).
5. The property is surrounded by residential uses, which has led to complaints from

Appellants and other neighbors regarding Tavern patrons' conduct. Concerns have included operation and enforcement issues, such as noise, littering, cursing, and other conduct not unexpected to occur at a tavern.

6. The Deck was constructed in 1992 without a building permit. The County closed the file in 1997 as there had been no further complaints.

7. In 2005, a complaint was filed regarding a replacement shed that allegedly failed to meet the setback. A building permit was issued for the structure and it was determined that Section 4.3(f) of the Ordinance applied and no setback variance was required.

8. This year, the permit for the New Porch was applied for and issued. The issuance of the building permit for the New Porch occasioned this appeal.

9. The New Porch does not encroach into the setbacks any more than the Deck. In fact, the Porch encroaches less than the Deck, as the Porch is constructed over the Deck and sits back 15' from its edge.

#### RATIONALE

Section 25.2(a) of the Zoning Ordinance for Washington County, Maryland vests this Board with the power to "hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in regard to the enforcement of this Ordinance, the Washington County Forest Conservation Ordinance, or of any ordinance adopted thereto."

In this instance, an existing non-conforming structure, the Deck, was built without securing a variance. When application was made for the building permit for the New Porch, the underlying Deck encroachment should have been noted and a variance should have been secured. The failure to require a variance application was error.

Accordingly, for the reasons set forth herein, this appeal is hereby GRANTED this 10<sup>th</sup> day of October, 2008.

BOARD OF APPEALS  
By: Bert Iseminger, Chair