BOARD OF APPEALS CASE NO. 5112	*	**BEFORE THE**
APPLICANT: Leo Appel & Patio Enclosures	*	**ZONING HEARING EXAMINER**
REQUEST: Variance to construct a sun porch within the required 40 foot rear yard setback; 808 Bear Cabin Drive, Forest Hill	*	**OF HARFORD COUNTY**
	*	**Hearing Advertised**
	*	**Aegis: 12/20/00 & 12/27/00**
HEARING DATE: February 14, 2001		**Record: 12/22/00 & 12/29/00**
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ZONING HEARING EXAMINER'S DECISION

The Applicant, Leo Appel, is requesting a variance pursuant to Section 267-36B, Table V, of the Harford County Code to construct a sun porch within the 40 foot rear yard setback (30 feet proposed) in an R2/Urban Residential District.

The subject parcel is located at 808 Bear Cabin Drive, Forest Hill, Maryland 21061 within the subdivision of Forest Lakes and is more particularly identified on Tax Map 40, Grid 3D, Parcel 199, Lot 114. The parcel consists of 10,000 square feet more or less, is presently zoned R2/Urban Residential District and is entirely within the Third Election District.

Mr. Gary Sipes, a representative of Patio Enclosures, Inc., appeared on behalf of the Applicant. The witness testified that the Applicant has an existing rear deck that he wishes to enclose. The deck is already roofed and has screening. The only change is to replace the screen with glass. The existing framework will be removed so that the entire room is surrounded by glass. The Applicant's property is very small and sits substantially lower, 30-40 feet, than the houses to the rear. There is, according to the witness, no other practical location for this enclosure. The proposed structure will not enlarge the existing deck or change its present location. The witness felt the elevation and size of the parcel made it topographically unique. The witness opined that the enclosure was like others found with regularity in Harford County including one directly across the street from the Applicant's property. Mr. Sipes did not feel that any adverse impact would result from the enclosure as proposed.

Case No. 5112 – Leo Appel & Patio Enclosures, Inc.

The Department of Planning and Zoning recommends approval of the requested variance, finding that the parcel's substantially lower elevation compared to other neighboring properties made this parcel unique.

There were no persons who appeared in opposition to this request.

CONCLUSION:

The Applicant seeks a variance pursuant to Section 267-36B, Table V, of the Harford County Code to enclose an existing deck within the 40 foot rear yard setback required (30 feet proposed).

Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code 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 Code 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 Code or the public interest."

In addition to the requirements of 267-11, the Maryland Court of Special Appeals has provided guidance in matters of variance requests and described a two step analysis in determining whether such requests should be granted. According to the guidance provided by the Court, the variance process is a two step sequential process:

1. **The first step requires a finding that the property whereon structures are to be placed(or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.**

2. **The second step is a demonstration whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property's uniqueness exists." Cromwell v. Ward, 102 Md. App. 691 (1995).**

Based on the testimony of Mr. Sipes and the findings of the Department of Planning and Zoning, the Hearing Examiner finds that the Applicant has met his burden pursuant to Section 267-11 and the test laid down in Cromwell, id.

The Hearing Examiner recommends approval of the Applicant's request subject only to his obtaining any and all necessary permits and inspections.

Date MARCH 2, 2001

William F. Casey
Zoning Hearing Examiner