APPLICANT: **Thomas P. Dieter**	**BEFORE THE**
	ZONING HEARING EXAMINER
REQUEST: A variance pursuant to Section 267-34C, Table II, of the Harford County Code to allow an addition within the 40 foot side yard setback	**FOR HARFORD COUNTY**
	BOARD OF APPEALS
HEARING DATE: May 19, 2004	**Case No. 5415**

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Thomas P. Dieter

LOCATION: 2311 Amoss Mill Road, Pylesville
Tax Map: 08 / Grid: 12 / Parcel: 182
Fourth Election District

ZONING: AG / Agricultural

REQUEST: A variance pursuant to Section 267-34C, Table II, of the Harford County Code, to allow the construction of a handicap accessible bathroom and bedroom within the 40 foot side yard setback (16 feet proposed).

TESTIMONY AND EVIDENCE OF RECORD:

Thomas P. Dieter, Applicant, testified that his request was to construct a 24 foot wide addition to the side of his house which would extend into the 40 foot required side yard setback by approximately 24 feet. Accordingly, there would be a resulting 16 feet setback.

Mr. Dieter testified that the proposed addition would contain a handicap accessible bathroom and bedroom. The dimensions of the addition would be approximately 24 feet x 30 feet. Mr. Dieter's wife is disabled, and the addition is for her use.

Referring to the plot plan of his property marked as Attachment 3 to the Staff Report, Mr. Dieter indicated that it was impossible to construct the addition anywhere else on his house. The well for the property is located in the front yard; the septic lines and septic reserve area are located directly to the rear of the dwelling, and his existing driveway and parking pad is located to the side of the property opposite the proposed location of the addition. The only remaining area is that proposed. Mr. Dieter indicated that this location actually abuts a 25 foot right-of-way to a lot to the rear of Mr. Dieter's house. That 25 foot right-of-way itself abuts a 60 foot right-of-way on the adjoining parcel. Accordingly, there will be at all times open space of no less than 85 feet from the side of Mr. Dieter's property in the location of the proposed addition.

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Mr. Dieter's son lives to the rear of the subject property and uses the 25 foot right-of-way as his driveway. The neighbor who owns the adjoining parcel, utilizing the 60 foot right-of-way, has no objection. Mr. Dieter's sons house is approximately 800 feet off of Amoss Mill Road. It will not be impacted by the proposed addition, and his son has no objection.

Mr. Dieter indicated no other neighbors would be able to see the proposed addition. The topography of the area in which the addition is to be located is level and the addition would be screened by existing vegetation. In support of his testimony Mr. Dieter offered photographs which were accepted into evidence as Exhibits 1, 2, 3 and 4.

Mr. Dieter indicated the siding of the addition would match the vinyl siding which is now on the house.

Next for the Department of Planning and Zoning testified Anthony McClune. Mr. McClune indicated he had visited the site. The property is clearly unique. Mr. Dieter's lot itself was subject to an earlier variance which as a result decreased its width from 200 feet to 175 feet. The resulting side yard is accordingly shallower than normal. Furthermore, the area of the proposed addition itself abuts two right-of-ways, neither of which would be built upon, and both of which would act as additional buffers. The addition cannot be built on any other side of Mr. Dieter's property due to existing physical constraints.

The addition should not be visible to any adjoining property owner or neighbor, and the variance would have no adverse impact on any adjoining property or individual.

No opponents appeared or testified in opposition.

APPLICABLE LAW:

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 267-41.1.H., 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."

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicant is faced with the need to construct a handicap accessible addition for the use of his wife. The addition will contain a bedroom and bathroom. The Applicant's lot is attractive, fully screened, and is unusual in that it adjoins, on the proposed addition side, a 25 foot driveway/right-of-way, and then an abutting 60 foot driveway/right-of-way. In effect, these two driveways create an 85 foot buffer to the side of the proposed addition.

The Applicant's property is unique in that it is somewhat narrower than required by Code, and that on three sides are located physical constraints, being an existing driveway, well, and septic reserve areas. The only possible area for an expansion is to the side as proposed by the Applicant.

If not granted, the variance Mr. Dieter would suffer the practical difficulty of being unable to construct a handicap accessible bathroom and bedroom for his wife. This is a use which other individuals can make of their properties, and it is a restriction caused by the application of the Zoning Code which the variance provision is designed to alleviate.

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CONCLUSION:

Accordingly, it is recommended the requested variance be granted, subject to the following conditions:

1. The Applicant obtain all necessary permits and inspections for the addition.

2. That the design and construction of the addition conform, to the extent reasonably possible, to that of the existing dwelling.

Date: June 2, 2004

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner