APPLICANTS:
David and Deborah Beatty

REQUEST: A variance to allow an addition to the existing attached garage and, if necessary, a modification of Condition No. 2 to Case No. 4132 to allow additional living space

HEARING DATE: October 6, 2004

BEFORE THE

ZONING HEARING EXAMINER

FOR HARFORD COUNTY

BOARD OF APPEALS

Case No. 5440

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: David and Deborah Beatty

LOCATION: 1346 Gates Head Drive, Parliament Ridge subdivision, Bel Air
Tax Map: 48 / Grid: 1E / Parcel: 436 / Lot: 27
Third Election District

ZONING: R2 / Urban Residential

REQUEST: A variance pursuant to Section 267-36B, Table V of the Harford County Code to allow an addition to the existing attached garage within the 10 feet side yard setback (4 feet 3 inch proposed) and if necessary, a modification of Condition 2 in Case No. 4132 to allow for additional living area.

TESTIMONY AND EVIDENCE OF RECORD:

David Beatty, Co-Applicant, testified that he wished to construct an addition to his residence located at 1346 Gates Head Drive, Bel Air, Maryland. Mr. Beatty and his wife had purchased their property about five years ago, and at that time planned to construct such an addition. At the time of its purchase the subject property had an addition off its left side which came to within approximately 4 feet of the side property line. A variance had been approved for the prior owner to allow this incursion into the required set back. However, the Applicants were not aware that the variance had been necessary to construct that addition, and were not informed of the existence of the variance at the time he purchased the subject property. Accordingly, they were of the belief that any further construction would be legal as long as it did not come any closer than within 4 feet of the existing property line, that is, no closer than the existing addition. The Applicants only learned that another variance was necessary for the proposed addition after their contractor attempted to obtain a building permit.

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The addition proposed by the Applicants would be two stories in height, and would be used in part to provide living space for two elderly adults in the Applicants' family. Both adults use walkers, and the proposed improvement would provide better access to the house and make it easier for them to get about. The upper floor of the two story addition will be a fourth bedroom for the Applicants' family.

The proposed addition would give the subject property four bedrooms, and would make it more comparable to that of the other homes in the neighborhood.

The Applicants have spoken to seven of their closest neighbors. None of those neighbors expressed any opposition. Each of those neighbors submitted letters of support which are contained within the file. Mr. Beatty does not believe that the proposed variance would have any adverse impact on the neighborhood.

Next for the Applicants testified Robert Newbeck, of Ventura Enterprises, Inc. Mr. Newbeck's company is the contractor hired by the Applicants to construct the addition. Mr. Newbeck stated that he only discovered that a variance had been granted for the existing addition at such time as he first applied for a building permit. Neither he nor the Applicants knew about the need for a variance or the issuance of the variance which allowed the construction of the addition within the setback.

Mr. Newbeck stated that the house is somewhat unusual as it is a tri-level, with two separate sets of interior steps. The addition would eliminate the necessity of the Applicants' elderly relatives form having to, by necessity, either go up or down as they enter the house.

Mr. Newbeck described the elevation of the property as dropping down in the rear yard. Combined with the design of the house, these features make it impractical to construct an addition without the variance.

Mr. Newback stated that the roof shingles and siding of the addition would match the existing roof shingles and siding of the residence.

The Harford County Department of Planning and Zoning Staff Report recommends that the request for variance be granted.

No evidence or testimony was presented in opposition.

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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 Applicants purchased a single family home five years ago in a subdivision of similar single family homes. The Applicants' property is somewhat different from the majority of others in that it is a tri-level, which compels one who enters the home to immediately take a stairway up or a stairway down.

When the Applicants first purchased the property it was apparent that an addition had been to the side of the existing home which came to within about 4 feet of the side property line. The Applicants were not informed that any variance had been granted or was applicable to the subject property. They accordingly believed that another addition could be built onto the property as a matter of right as long as it encroached no closer to the property line than that of the existing addition, or about 4 feet from the property line.

The Applicants eventually decided to build such an addition, primarily for the ease and convenience of his elderly relatives who occasionally stay with them for extended periods of time.

It was only after the Applicant hired a contractor that it was discovered that the existing addition was built only pursuant to a variance, and no new addition could be constructed without a similar variance. Accordingly, the Applicants have filed for this variance.

The Applicants argue, and it is found as a matter of fact, that the tri-level construction of the Applicant's home and the lot's sloping rear yard, together with an existing addition constructed only with the granting of variance, creates an unusual situation not experienced by other houses in the neighborhood. As a result, the Applicants would suffer a practical difficulty if not able construct their addition at the location proposed. The relief requested is the minimum necessary to alleviate this difficulty.

It is further found that the requested variance would have no adverse impact on adjoining properties. It is further found that the reasons provided by the Board of Appeals in its decision in Case Number 4132, dated March 7, 1991, which granted the variance for the existing construction, remain fully applicable to the requested relief, which would have no greater impact than the relief requested and granted in 1991.

CONCLUSION:

It is accordingly recommended that the request for variance be granted, subject to the following conditions:

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

2. The existing garage and proposed addition shall not be used in the furtherance of a business.

3. The addition shall not come any closer to the side property line than the existing garage.

Date: November 3, 2004

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner