

**FINDINGS AND RECOMMENDATION
OFFICE OF PLANNING AND ZONING
ANNE ARUNDEL COUNTY, MARYLAND**

APPLICANTS: A. Ray Martin

ASSESSMENT DISTRICT: 4

CASE NUMBER: 2023-0134-V

COUNCIL DISTRICT: 1

HEARING DATE: October 19, 2023

PREPARED BY: Sumner Handy
Planner

REQUEST

The applicant requests a variance to perfect a dwelling addition (basement and main level living room) with less setbacks than required on property located at 1561 Matthews Town Road in Hanover.

LOCATION AND DESCRIPTION OF SITE

The subject property measures 21,815 square feet in area and is situated at the southeast corner of Matthews Town Road and Ridge Chapel Road in Hanover. It is identified as Parcel 549, on Block 3 of Tax Map 14 in Hanover. The subject site is zoned R1 - Residential District and has been since comprehensive zoning for the First Council District, effective July 10, 2011.

This property is located outside of the Chesapeake Bay Critical Area, and is developed with a two-story single-family dwelling with a basement, carport, koi pond, and associated facilities, and is served by public water and sewer systems.

APPLICANT'S PROPOSAL

The applicant proposes to perfect the in-process construction of an L-shaped two-story addition (basement and main level living room) to the existing dwelling along the north and southwestern facades of the existing dwelling, measuring 36.4 feet by 24.3 feet along the lengths of the L.

REQUESTED VARIANCES

Section 18-4-501 of the Anne Arundel County Zoning Code requires that a principal structure in an R1 - Residential District be set back a minimum of 40 feet from a corner side lot line. The addition to the principal structure is proposed to be located approximately 33.4 feet from the corner side lot line, necessitating a variance of seven feet.

FINDINGS

Measuring 21,815 square feet in area, the subject property is shy of the 40,000 square foot minimum standard lot size for new lots created in the R1 District. In the letter of explanation, the applicant notes the lot's undersized nature and stated that the situating of the dwelling (constructed in 1981, per State tax records) in a diagonal manner across the lot and the restrictiveness of the 40-foot corner side setback requirement make improvements to the dwelling at this property challenging. The applicant

avers that the addition will have no negative impacts on the character of the neighborhood nor on the public welfare, and the accompanying site plan confirms that the coverage by structures would not exceed the limit established in the R1 District after completion of the addition, should it be permitted.

The **Health Department** noted that the property is served by public water and sewer, and offered no objection to the proposal.

In the case of the subject property and the applicant, there is extensive relevant case history. For the granting of a zoning variance, a determination must be made that, because of unique physical conditions, there is no reasonable possibility of developing the lot in strict conformance with the Code, or that, because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship in the development of the lot. Pursuant to the decisions issued by the Anne Arundel County Office of Administrative Hearings and Board of Appeals in AHO case number 2000-0120-V and its related Board of Appeals matter number 46-00V, and AHO case number 2006-0285-V and its related Board of Appeals matter number 67-06V (each appended to the record here), there is in the record a finding and conclusion that while unique physical conditions exist on the property, the minimum variance necessary to achieve development of the lot has already been granted and so subsequent variance relief is unwarranted.

The applicant applied for a variance (case number 2000-0120-V) to construct an addition (three-car garage and upstairs library) with less front setbacks from Matthews Town Road than required. The Administrative Hearing Officer granted modified relief in response to that request; the applicant appealed that decision and was granted even-further modified (less) relief by the Board of Appeals (Board of Appeals case number 46-00V) than was granted by the AHO. (The decision issued by the AHO was more favorable to the applicant than the decision issued by the Board of Appeals, subsequent to his appeal.) The applicant did not appeal the Board's decision (which became final), but instead built the addition in violation of the dimensions granted by the Board.

In AHO case number 2006-0285-V, this same applicant - having completed construction of the aforementioned addition in violation of the variance relief granted/not granted - applied for a variance to perfect construction of that garage/library addition, and for a variance to perfect the construction of an L-shaped dwelling addition with less corner side setbacks from Ridge Chapel Road than required. The application was denied. In Board of Appeals matter number 67-06V, the Board upheld the AHO's decision which (like the previous decision handed by the Board to this applicant) was not subsequently appealed by the applicant to the Circuit Court. Bringing closure to the entire matter, building violation number B-2004-120 was closed on May 28, 2009, with a civil fine and completion of the demolition of the illegal dwelling additions.

Building violation number B-2022-496 was initiated in November of 2022 noting extensive addition and renovation work; a roofed accessory structure in the front yard housing an aircraft fuselage; and a roofed addition in the rear - each of which without required permits. A stop work order was issued, and the applicant agreed to pursue this variance application. As described in the OPZ's staff report prepared for case number 2000-0120-V, this applicant applied for a building permit for an addition (bedroom, covered stairway, and deck) and received that permit in July of 2000. This fact is noted here as it establishes that the applicant was aware of the proper procedures to undertake before these violations were committed, related complaints lodged, or enforcement actions taken.

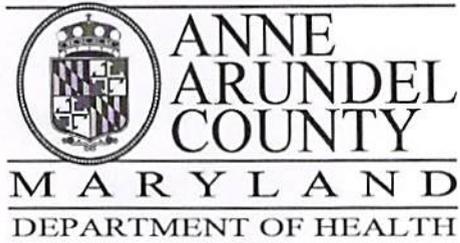
The Office of Planning and Zoning today is bound by the record, and concludes that the applicant and this property have been granted the minimum variance necessary to achieve development of the lot.

The extent of the additions, as has been observed in the record, will alter the essential character of the neighborhood. Construction of additions absent institutionalized County approvals and inspections poses a threat to the public welfare.

RECOMMENDATION

Based upon the standards set forth in § 18-16-305 of the Anne Arundel County Code under which a variance may be granted, this Office recommends *denial* of a variance to Section 18-4-501 of seven feet to the required corner side setback to perfect the construction of a dwelling addition.

DISCLAIMER: This recommendation does not constitute a building permit. In order for the applicant(s) to construct the structure(s) as proposed, the applicant(s) shall apply for and obtain the necessary building permits, and obtain any other approvals required to perform the work described herein. This includes but is not limited to verifying the legal status of the lot, resolving adequacy of public facilities, and demonstrating compliance with environmental site design criteria.



J. Howard Beard Health Services Building
3 Harry S. Truman Parkway
Annapolis, Maryland 21401
Phone: 410-222-7095 Fax: 410-222-7294
Maryland Relay (TTY): 711
www.aahealth.org

Tonii Gedin, RN, DNP
Health Officer

MEMORANDUM

TO: Sumner Handy, Zoning Applications
Planning and Zoning Department, MS-6301

FROM: Brian Chew, Program Manager 
Bureau of Environmental Health

DATE: 8/31/2023

RE: Ray A. Martin
1561 Matthews Town Rd.
Hanover, MD 21076

CASE
NUMBER: 2023-0134-V

SUBJECT: Variance/Special Exception/Rezoning

The Health Department has received the above referenced variance request to allow a dwelling addition (living space) with less setbacks than required. The Health Department offers the following comments:

The Health Department has reviewed the above referenced request. The property is served by public water and sewer facilities. The Health Department has no objection to the above referenced request.

If you have further questions or comments, please contact Jasmine Baldwin at 410-222-1348.

cc: Sterling Seay

03/22/2023

< 1 of 113 >

Select Date ▾



RIDGE CHAPEL RD

MATTHEWS TOWN RD

RIDGE CHAPEL RD



IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2000-0120-V

IN RE: A. RAY MARTIN

FOURTH ASSESSMENT DISTRICT

DATE HEARD: MAY 18, 2000

ORDERED BY: STEPHEN M. LeGENDRE, ADMINISTRATIVE HEARING OFFICER

ZONING ANALYST: CHARLENE MORGAN

DATE FILED: JUNE 1st, 2000

PLEADINGS

A. Ray Martin, the applicant, seeks a variance (2000-0120-V) to permit a garage addition with less setbacks than required on property located along the south side of Matthews Town Road, east of Ridge Chapel Road, Hanover.

PUBLIC NOTIFICATION

The case was advertised in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175' of the property was notified by mail, sent to the address furnished with the application. Mr. Martin testified that the property was posted for 14 days prior to the hearing. I find and conclude that the requirements of public notice have been satisfied.

FINDINGS AND CONCLUSIONS

The applicant owns a single-family dwelling with a street address of 1561 Matthews Town Road, Hanover. The property comprises 21,780 square feet and is zoned R-1 residential. The applicant proposes to construct a 48' X 40' two-story addition (three-car garage below, a library above) within 18 feet of the front lot line (Matthews Town Road).

The Anne Arundel County Code, Article 28, Section 2-305(a) requires lots in the R-1 residential district to maintain a front building line 40 feet from the

front lot line or street right-of-way. Accordingly, the proposal necessitates a variance in the amount of 22 feet.

Charlene Morgan, a zoning analyst with the Department of Planning and Code Enforcement, testified that the property is below the minimum area for the R-1 district. She recognized the need for relief from the code. However, she questioned the extent of the request. She recommended a smaller footprint (24' X 40') which would accommodate parking for two cars while maintaining 30 feet to Matthews Town Road.

Mr. Martin stated that the dwelling is angled on the lot. He suggested that Ridge Chapel Road should be considered the front lot line. He also stated that he requires a three-car garage for his vehicles. The addition also incorporates stairs and a hallway to reach the upper level library.

At this juncture, Ms. Morgan observed that the variance would not change if Matthews Town Road is considered the side street. See, Section 2-305(a)(2): "a corner lot shall have a side building line at least 40 feet from and parallel to the side street line or right-of-way; . . .".

The standards for granting variances are contained in Section 11-102.1. Under subsection (a), a zoning variance may be granted only after determining either (1) unique physical conditions, peculiar to the lot, such that there is no reasonable possibility of developing the lot in strict conformance with the code; or (2) exceptional circumstances such that the grant of a variance is necessary to avoid an unnecessary hardship, and to enable the applicant to develop the lot.

Under subsection (c), any variance must be the minimum necessary to afford relief; and its grant may not alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare.

Upon review of the facts and circumstances, I find and conclude that the applicant is entitled to modified relief to the code. This case satisfies the test of unique physical conditions, consisting of a corner lot which is below the minimum standard for area with the dwelling placed at an angle, such that there is no reasonable possibility of developing the lot in strict conformance with the code. However, the requested addition is very large – more than double the footprint of the existing dwelling. Even considering the applicants' desire for a three-car garage, I am unable to approve a request to reduce the setback by more than half. I believe that the minimum relief is to permit a 36' X 40' addition, which will maintain a 25-foot setback to Matthews Town Road. I find and conclude that the modified variance will not alter the essential character of the neighborhood, substantially impair the appropriate use of development of adjacent property, or be detrimental to the public welfare.

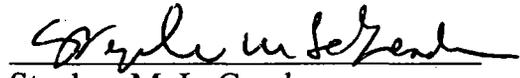
ORDER

PURSUANT to the application of A. Ray Martin, petitioning for a variance to permit a garage addition with less setbacks than required; and

PURSUANT to the advertising, posting of the property, and public hearing

and in accordance with the provisions of law, it is this 15th day of June, 2000,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant is hereby **granted** a *modified* variance in the amount of 15 feet to the required 40-foot front setback to permit a 36' X 40' addition.


Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

Within thirty (30) days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

Further, Section 11-102.2 of the Anne Arundel County Code states:

A variance granted under the provisions of this Article shall become void unless a building permit conforming to the plans for which the variance was granted is obtained within one year of the grant and construction is completed within two years of the grant.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this order, otherwise they will be discarded.

BOARD OF APPEALS

FINDINGS AND RECOMMENDATION
DEPARTMENT OF PLANNING AND CODE ENFORCEMENT
ANNE ARUNDEL COUNTY, MARYLAND

PROTESTANTS CD 1
EXHIBIT #
NAME MARTIN
ASSESSMENT DISTRICT: Fourth
CASE BA 46-00V
9-19-00
COUNCILMANIC DISTRICT: First

APPLICANT: Martin, A. Ray

ASSESSMENT DISTRICT: Fourth

CASE NUMBER: BA46-00V
2000-0120-V

COUNCILMANIC DISTRICT: First

HEARING DATE: September 19, 2000

PREPARED BY: Charlene L. Morgan
Planner

REQUEST

The applicant is requesting a variance to permit a dwelling addition with less setbacks than required.

DESCRIPTION OF SITE

The subject property contains 21,780 square feet. The property is located in Hanover, Maryland. Located on Tax Map 14, Block 3, Parcel 549, the site is currently developed with a single family dwelling.

The current R1- Residential District classification of the site was received as a result of the comprehensive rezoning for the Fourth Assessment District, effective June 12, 1989.

APPLICANT'S PROPOSAL

The applicant proposes to construct a 40' x 48' three (3) car garage addition with a second story library which is to be located within 18 feet of the front lot line.

REQUESTED VARIANCE

Section 2-305(a)(1) requires a front building line to measure at least 40 feet from and parallel to the front lot line or street right-of-way. As such, a variance of 22 feet is requested.

RECOMMENDATIONS

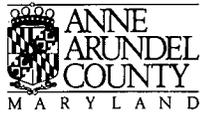
With regard to the standards by which a variance may be granted, as set forth under Section 11-102.1, this Office offers the following:

The subject property contains less lot area than a current R1 lot. A permit for a bedroom addition, covered stairway and deck was issued in July 2000. The existing dwelling, including the recent addition, meets current setbacks and is located diagonally on the property. The proposed addition will more than double the footprint of the dwelling. Some relief seems reasonable, however, this office recommends a 24' x 40' addition which would accommodate a

two car garage, maintain a 30 foot setback to Matthews Town Road and require a more minimal variance of 10 feet.

Based on the above, this Office cannot support the variance as requested.

CASE # 2000-0120V
FEE PAID 150.00
DATE 3/22/00



ZONE R1 ALEX 664
200 MAP 49 1000 MAP _____
CRITICAL AREA:
IDA ___ LDA ___ RCA ___

VARIANCE APPLICATION

Applicant: A. Ray Martin
(All persons having 10% or more interest in property)

Property Address: 1561 Matthews Town, Hanover MD 21076

Property Location: 150' feet of frontage on the (S) side of Matthews Town Rd
~~Ridge Chapel Rd~~ street, road, lane, etc.; 80' feet
~~(e) of Matthews Town Rd~~ street, road, lane, etc. (nearest intersecting street).
Ridge Chapel Rd.

Tax Account Number 4000-0639-1000 Tax District 4 Council District 1

Waterfront Lot N Corner Lot Y Deed Title Reference 9438-338

Zoning of Property R1 Lot # _____ Tax Map 14 Block 03 Parcel 549

Area (sq. ft. or acres) 1/2 acre Subdivision Name Hanover
21,780 sq. ft. 500 built 1981

Description of Proposed Variance Requested (Explain in sufficient detail including distances from property lines, heights of structures, size of structures, use, etc.) Structure is 48' x 40', same height as existing dwelling, one corner comes to 15' from West side of property, one corner comes to 14' from North side of property, variance to permit a garage addition with less setbacks than required

The applicant hereby certifies that he or she has a financial, contractual, or proprietary interest equal to or in excess of 10 percent of the property; that he or she is authorized to make this application; that the information shown on this application is correct; and that he or she will comply with all applicable regulations of Anne Arundel County, Maryland.

A. Ray Martin
Applicant's Signature

A. Ray Martin
Owner's Signature

A. Ray Martin
Print Name

A. Ray Martin
Print Name

1561 Matthews Town Rd
Street Number, Street, PO Box

1561 Matthews Town Rd
Street Number, Street, PO Box

Hanover, MD 21076
City, State, Zip

Hanover, MD 21076
City, State, Zip

Home Phone _____ Work Phone 410 865 8254

Home Phone _____ Work Phone 410 865 8254

For Office Use Only

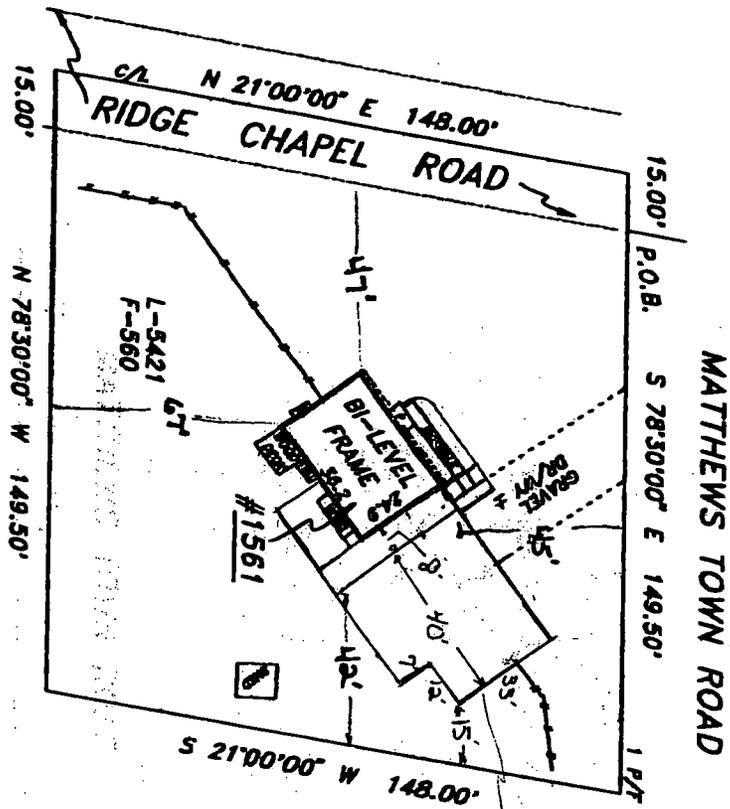
Application accepted by Anne Arundel County, Office of Planning and Zoning

Suzanne Duffenduff
Signature

3/22/00
Date

ANNE ARUNDEL CO.
RECEIVED

MAR 22 2000



Proposed attached garage



RE: An Appeal for a Variance to the Zoning Regulations

A. RAY MARTIN

Petitioner

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**BEFORE THE
COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY
CASE NO. BA 46-00V
(2000-0120-V)
Hearing Date: September 19, 2000**

MEMORANDUM OF OPINION

Summary of Pleadings

This is an appeal from a decision of the Administrative Hearing Officer. This appeal is taken from the granting of a modified variance to permit the construction of a garage addition with fewer setbacks than required. The property is located 150 feet along the south side of Matthews Town Road, zero feet east of Ridge Chapel Road, Hanover.

Summary of Evidence

Ms. Charlene Morgan, a planner with the Office of Planning and Zoning, testified that the Petitioner is requesting a variance to permit a dwelling addition with fewer setbacks than required. The subject property contains 21,780 square feet and is within the R1-Residential district. The applicant proposes to construct a 40 by 48 foot addition with a three-car garage and a second story library. The addition is to be located 18 feet from the front lot line. Article 28, Section 2-305(a)(1) requires the front building line on a property within the R1 district to be set back at least 40 feet from and parallel to the front lot line or street right of way. Therefore, the Petitioner requests a variance of 22 feet to the minimum front building line setback requirement. Ms. Morgan explained that the subject property contains less lot area than a conforming R1 lot. A permit for a bedroom addition, covered stairway and deck was issued in July 2000. The existing dwelling, including the bedroom addition, meets current setbacks and is located diagonally across the property. The proposed

addition would more than double the footprint of the dwelling. Ms. Morgan believes, however, that some relief is reasonable. She recommended that the Board grant a 24 by 40 foot addition, which would accommodate a two-car garage and maintain a 30-foot setback to Matthews Town Road. Her recommended addition would require a more minimal variance of 10 feet.

Mr. A. Ray Martin, the Petitioner, testified that his property is within the R1 zone, but does not measure an acre in size. He explained to the Board that he needs a three-car garage. He has several cars to store within the garage. Without adequate indoor storage space, he must store some items outside. Some personal property has been stolen from his yard. His neighbors have also lost items. The garage would be used for storing his cars and gardening items. He believes that the three-car garage would be more aesthetically pleasing than a two-car garage addition. Mr. Martin explained that it is immaterial that his garage would be closer to the roadway than permitted by Code since there is already a utility pole that is 35 feet tall and 10 inches in diameter sitting near the roadway adjacent to the proposed garage.

Ms. Morgan was recalled to testify at the request of the Board. She explained that the garage addition is not subject to the restrictions on accessory structure size since the addition is part of the dwelling rather than a detached structure.

All testimony was stenographically recorded and the recording is available to be used for the preparation of a written transcript of the proceedings.

Findings and Conclusions

In this case, the Petitioner is requesting a variance to the 40-foot minimum front yard requirement for property within the R1-Residential district. See, Anne Arundel County Code (the "Code"), Article 28, Zoning, §2-305(a)(1). The Petitioner is proposing to construct a dwelling addition, to include a three-car garage and second story library. The addition is planned to be set back only 18 feet from street right of way. The Petitioner has requested, therefore, a variance of 22 feet to the required minimum front yard. In order to grant the requested variance, the Board must

find first that the Petitioner has complied in all respects with the provisions of Article 3, §2-107 of the Code. The provisions of that section are incorporated herein by reference.

The Board finds that some unique physical conditions exist on the property. See, Code, Article 3, §2-107(a)(1). The property is a corner lot that measures 21,780 square feet, which is smaller than a lot developed under the current R1 standards. The improvements currently on the property are located diagonally across the site and create difficulty in locating an addition without violating the required setbacks. When the front yard setback requirements are applied to this corner lot, there is limited area in which to place an addition to the residence. Due to the impact of the required setbacks on this small, older lot, the resulting buildable area would render difficult any addition to the existing residence. The Board finds, therefore, that as a result of the size and configuration of this lot, there is no reasonable possibility of developing the lot to include an addition without a variance to the Code requirements.

Notwithstanding the unique characteristics of this lot, however, the Board finds that the Petitioner's request is not the minimum necessary to afford relief to the Petitioner. See, id., §2-107 (c)(i). The site plan shows that the proposed addition is to be located only 18 feet from the front property line and would measure 40 feet by 48 feet (more than doubling the footprint of the existing dwelling). The Board finds that if the proposed construction encroaches only 10 feet into the required setback area, however, the variance would represent the minimum variance necessary to provide relief to the Petitioner, by permitting the construction of a 24 foot by 40 foot addition to include a two-car garage, while providing the greatest protection to the neighborhood from encroaching structures. The resulting dwelling addition would then be set back an adequate distance from the street line.

The grant of a variance, as modified by the Board, will not alter the essential character of the neighborhood nor be detrimental to the public welfare. See, id., §2-107(c)(2)(i) and (iv). The variance would provide Mr. Martin the opportunity to improve his property to the gain of the

neighborhood, but would not permit an unsafe condition to result from placing the structure too close to the street line. We believe that the placement of this addition only 18 feet from the street line is likely to impact safety negatively by impairing the view of traffic and pedestrians. Also, the placement of the addition only 18 feet from the street line would not be compatible with the essential character of the neighborhood. Front lot line setback regulations are very important in maintaining a consistent appearance through a community. When the front lot line setback is violated, the impact on the neighborhood can be massive. As such, variances to the front lot line setback requirements impact the character of a community most directly and should be granted only where absolutely necessary. A minor variance of 10 feet to the required 40-foot setback, however, will not harm the character of the neighborhood.

So long as a minimum 30-foot setback from the front lot line is maintained, the proposed house will not substantially impair the appropriate use or development of adjacent property. See, id., §2-107(c)(2)(ii). The neighborhood is currently developed. The Petitioner will meet the minimum required side and rear yard setbacks for properties within the R1 zone. There has been no showing that the modified addition to the residence on the subject lot will impair adjacent properties.

Since this property is not within the Critical Area, the Board need not consider the clearing and replanting practices associated with the proposed development. See, id., §2-107(c)(2)(iii).

ORDER

For the reasons set forth in the foregoing Opinion, it is this 16th day of NOVEMBER, 2000, by the County Board of Appeals of Anne Arundel County, ORDERED, that the Petitioner is granted a variance of 10 feet to the required 40 foot setback of the front building line from the front lot line or street right of way to permit the construction of a 24 foot by 40 foot addition to the residence.

Any appeal from this decision must be in accordance with the provisions of Section 604 of the Charter of Anne Arundel County, Maryland.

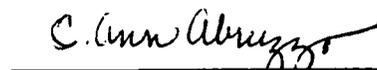
If this case is not appealed, exhibits must be claimed within 60 days of date of the expiration of the appeals period; otherwise they will be discarded.

Any notice to this Board required under the Maryland Rules shall be addressed as follows:
Anne Arundel County Board of Appeals, Arundel Center, P.O. Box 2700, Annapolis, Maryland 21404, ATTN: Mary M. Leavell, Clerk.

COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY

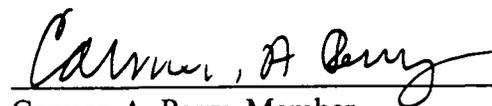

Anthony V. Lamartina, Chairman


Christopher H. Wilson, Vice-Chairman


C. Ann Abruzzo, Member


William C. Knight, III, Member


William Moulden, Member


Carmen A. Perry, Member


Robert P. Pratz, Member

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

CASE NUMBER 2006-0285-V

IN RE: A. RAY MARTIN

FOURTH ASSESSMENT DISTRICT

DATE HEARD: SEPTEMBER 21, 2006

ORDERED BY: **STEPHEN M. LeGENDRE**, ADMINISTRATIVE HEARING OFFICER

PLANNER: **PATRICIA A. COTTER**

DATE FILED: SEPTEMBER 29, 2006

PLEADINGS

A. Ray Martin, the applicant, seeks a variance (2006-0285-V) to permit dwelling additions with less setbacks than required on property located along the south side of Matthews Town Road, east of Ridge Chapel Road, Hanover.

PUBLIC NOTIFICATION

The hearing notice was posted on the County's web site in accordance with the County Code. The file contains the certification of mailing to community associations and interested persons. Each person designated in the application as owning land that is located within 175 feet of the property was notified by mail, sent to the address furnished with the application. Mr. Martin testified that the property was posted for more than 14 days prior to the hearing. I find and conclude that there has been compliance with the notice requirements.

FINDINGS AND CONCLUSIONS

This case concerns the same property the subject of decisions by this office in Case No. 2000-0120-V (June 1, 2000) and the County Board of Appeals in Case No. BA46-00V (November 16, 2000). In Case No. 2000-0120-V, Mr. Martin requested a variance of 22 feet to the 40-foot front setback applicable in the R1 district to permit the construction of a 48 X 40 two-story addition (3-car garage below, library above). The order approved a modified variance in the amount of 15 feet to permit a 36 X 40 addition. Mr. Martin exercised his right of appeal to

the County Board of Appeals. However, the Board decided that the minimum variance consisted of an encroachment of 10 feet into the setback for the construction of a 2-car garage addition measuring 24 X 40 feet. The applicant did not exercise his right of appeal to the Circuit Court for Anne Arundel County. Nevertheless, in 2003, he proceeded to construct a garage/study addition measuring 40 X 40 feet, which is located 20 feet from the front lot line. Also in 2003, he excavated the foundation for an L configured living room addition (12 X 40 feet) 33 feet from Ridge Chapel Road, a side street running along the western boundary of the property. Neither project had permits. The present request is to perfect the construction of the garage/study addition and to perfect and complete the construction of the living room addition.

Anne Arundel County Code, Article 18, Section 18-4-501 provides that a principal structure in the R1 district must maintain a front setback of 40 feet and a side street setback of 40 feet. Accordingly, the applicant requests variances of 20 feet to the front setback and 7 feet to the side street setback.

Patricia A. Cotter, a planner with the Office of Planning and Zoning, testified that the property is below the minimum area for the district with the dwelling angled across the intersection. Prior to the new construction, the dwelling complied with the applicable setbacks. Ms. Cotter was unaware of the appeal to the Board of Appeals. However, based on the prior decision by this office, she disputed the hardship and the extent of the relief. She also suggested that the granting of the variances would alter the essential character of the

neighborhood, impair the use or development of adjacent property and constitute a detriment to the public welfare. By way of conclusion, Ms. Cotter opposed both aspects of the application.

On cross-examination by counsel to the applicant, Ms. Cotter indicated that she has not visited the property. She was unaware of the support of the homeowners' association and a petition in favor of the request from several neighbors.

Mr. Martin submitted statements in support of the application from residences along both Ridge Chapel Road and Matthews Town Road. He also submitted several site photographs showing the extent of screening. His counsel provided a copy of a Consent Order entered into by the County and the applicant in Civil Action No. 0702-SP-03537-2005 (District Court for Anne Arundel County). In brief, the Order proscribed further construction absent the benefit of a building permit; obligated the applicant to pursue the variances in order to obtain permits, or else raze the illegal addition; and imposed a civil fine.

Christopher Taylor, who resides across from the property, testified in support of the application, which he believes has no adverse impact on the character of the neighborhood or on the sight distances.

The standards for granting variances are unchanged since the prior application. Under Section 18-16-405(a), there must be either (1) a showing of unique physical conditions, peculiar to the property, such that there is no reasonable possibility of development of the lot in strict conformance with the

code; or (2) exceptional circumstances other than financial considerations such that the variances are necessary to avoid an unnecessary hardship and to enable the applicant to develop the lot. Under Section 18-16-405(c), any variance must represent the minimum relief; and its grant may not alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or cause a detriment to the public welfare.

This is not a particularly difficult case. As previously determined by both this office and the County Board of Appeals, the property satisfies the test of unique physical conditions. Accordingly, the subsection (a)(1) criterion is satisfied. Where the present request fails is in the application of the subsection (c) criteria. Simply put, the final, unappealed decision by the County Board of Appeals established that the minimum relief for this property is the construction of a 24 X 40 foot addition consisting of a 2-car garage. Despite the impassioned urging of the applicant, this office is neither authorized nor inclined to countermand the decision by the County Board of Appeals. Given these findings, it is unnecessary to consider the balance of the subsection (c) criteria.

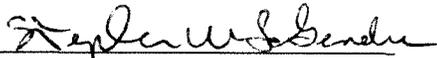
Nevertheless, I have done so. Even conceding that the granting of the variances would not alter the essential character of the neighborhood or substantially impair the use or development of adjacent property, the granting of the variances where the applicant has exceeded the prior approval is surely detrimental to the orderly administration of the zoning code and conflicts with the public welfare which the zoning code is intended to serve.

ORDER

PURSUANT to the application of A. Ray Martin, petitioning for a variance to permit dwelling additions with less setbacks than required; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is this 29 day of September, 2006,

ORDERED, by the Administrative Hearing Officer of Anne Arundel County, that the applicant's request is **denied**.


Stephen M. LeGendre
Administrative Hearing Officer

NOTICE TO APPLICANT

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order, otherwise that will be discarded.

**FINDINGS AND RECOMMENDATION
OFFICE OF PLANNING AND ZONING
ANNE ARUNDEL COUNTY, MARYLAND**

APPLICANT: A. Ray Martin

ASSESSMENT DISTRICT: Fourth

CASE NUMBER: 2006-0286-V

COUNCILMANIC DISTRICT: First

HEARING DATE: September 21, 2006

PREPARED BY: Patricia A. Cotter
Planner

REQUEST

The applicants are requesting a variance to permit dwelling additions with less setbacks than required.

LOCATION AND DESCRIPTION OF SITE

The subject site consists of 21,780 square feet. It is located at the southeast intersection of Matthews Town Road and Ridge Chapel Road. The property is shown as Parcel 549 in Block 03 on Tax Map 14.

The property has been zoned R1-Residential since the adoption of the Severn Small Area Plan zoning maps effective December 5, 2002.

APPLICANT'S PROPOSAL

The applicants are proposing to perfect the construction of both a 40' x 40' two story addition with less front yard setbacks than required and a 12' x 40' living room addition with less side street setbacks than required.

REQUESTED VARIANCE

Article 18-4-501 of the Anne Arundel County Code requires a minimum setback of 40 feet from the front property line. The garage addition was constructed 20 feet from the front lot line. As such, a variance of twenty feet is required to the 40-foot setback to the front lot line.

Additionally, it further requires a minimum setback of 40 feet to the corner side lot line is required. The site plan indicates a setback of 33' to the side street lot line of Ridge Chapel Road. As such, a variance of seven feet is required.

FINDINGS

This Office finds that the subject property is nonconforming with respect to the minimum lot size (40,000 square feet) requirements for a lot in an R1-Residential district. The lot is improved with a single-family dwelling that was constructed at a diagonal across the lot. The existing dwelling prior to the construction of the subject additions met all the required R1-Residential building setbacks.

This Office must note that the lot in question was the subject of a previously approved variance. In variance case #2000-0120-V, the applicant requested a variance of 20 feet to the front yard setback of 40 feet. The Administrative Hearing Officer, however, in a decision dated June 1, 2000 granted a modified variance of 15 feet to the 40 front yard setback. The modification required a reduction in the size of the proposed addition and a front yard setback of 25 feet in lieu of the requested 20 foot.. Subsequent to the variance decision, the applicant constructed the addition but did not modify the size and location. It was not built in compliance with the approved variance order. The subject variance is perfect the construction of the garage addition.

Additionally, it was further noted that the applicant started construction of the 12' x 40' L-shaped addition on the west side of the dwelling. Since the proposed living room addition abuts the side street lot line of Ridge Chapel Road, it must meet a side street setback of 40 feet. The applicant has informed this Office that the hole has been dug for the addition and it is only 33 feet from Ridge Chapel Road.

While this Office would concede that some relief would seem reasonable in this request, it does not appear that the applicant's requests are the minimum relief necessary to afford relief. In variance case #2000-0120-V the Administrative Hearing Officer determined the minimum variance for this lot. It appears that the decision was disregarded. The garage addition more than doubled the size of the dwelling. This Office must question the inherent hardship in the request for a variance to the side street setback.

In the previous variance decision, it stated that a "modified variance will not alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property or be detrimental to the public welfare." The proposed addition was not modified so one must question what impact the construction will have on the character of the neighborhood, the development of adjacent property and the public welfare.

RECOMMENDATION

Based upon the standards set forth in Article 18-16-305 under which a variance may be granted, this Office **cannot support** the applicant's requests to perfect the construction of a garage addition and a living room addition as shown on the site plan.

This recommendation does not confirm the legal status of a lot. The legality of a lot is determined through the building permit process.

Patricia A. Cotter

Patricia A. Cotter
Planner II

9/20/06

Date

Suzanne Schappert for

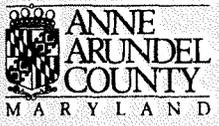
Suzanne Schappert
Planning Administrator

9/20/2006

Date

Thurs. 9/21 @ 9:45

CASE # 2006-0285-V
FEE PAID 210.00
DATE 08 01 2006



ZONE _____ ALEX _____
200 MAP _____ 1000 MAP _____
CRITICAL AREA:
IDA _____ LDA _____ RCA _____

VARIANCE APPLICATION

Applicant: A Ray Martin
(All persons having 10% or more interest in property)

Property Address: 1561 Matthews Town Rd, Hanover MD 21076

Property Location: 150' feet of frontage on the (n,s) e, w) side of Matthews Town Rd
street, road, lane, etc.; 0' feet
(n, s, e, w) of Ridge Chapel Rd street, road, lane, etc. (nearest intersecting street).

Tax Account Number 4000-0639-1000 Tax District 4 Council District 1

Waterfront Lot N Corner Lot Y Deed Title Reference 9438-338

Zoning of Property R1 Lot # _____ Tax Map 14 Block 03 Parcel 549

Area (sq. ft. or acres) 21780 Subdivision Name Hanover built 1981

Description of Proposed Variance Requested (Explain in sufficient detail including distances from property lines, heights of structures, size of structures, use, etc.) variance to permit dwelling additions with less setbacks
structure is 40x40'
same height as existing dwelling, one corner comes to 20' from west than required
side of property, one comes to 16' from North side of property
variance to permit a garage/study addition with less setbacks than required

The applicant hereby certifies that he or she has a financial, contractual, or proprietary interest equal to or in excess of 10 percent of the property; that he or she is authorized to make this application; that the information shown on this application is correct; and that he or she will comply with all applicable regulations of Anne Arundel County, Maryland.

A Ray Martin
Applicant's Signature

A Ray Martin
Owner's Signature

A. Ray Martin
Print Name

A. Ray Martin
Print Name

1561 Matthews Town Rd
Street Number, Street, PO Box

1561 Matthews Town Rd
Street Number, Street, PO Box

Hanover MD 21076
City, State, Zip

Hanover MD 210
City, State, Zip

240 463 0677
Home Phone

240 463 0677
Home Phone

Work Phone

Work Phone

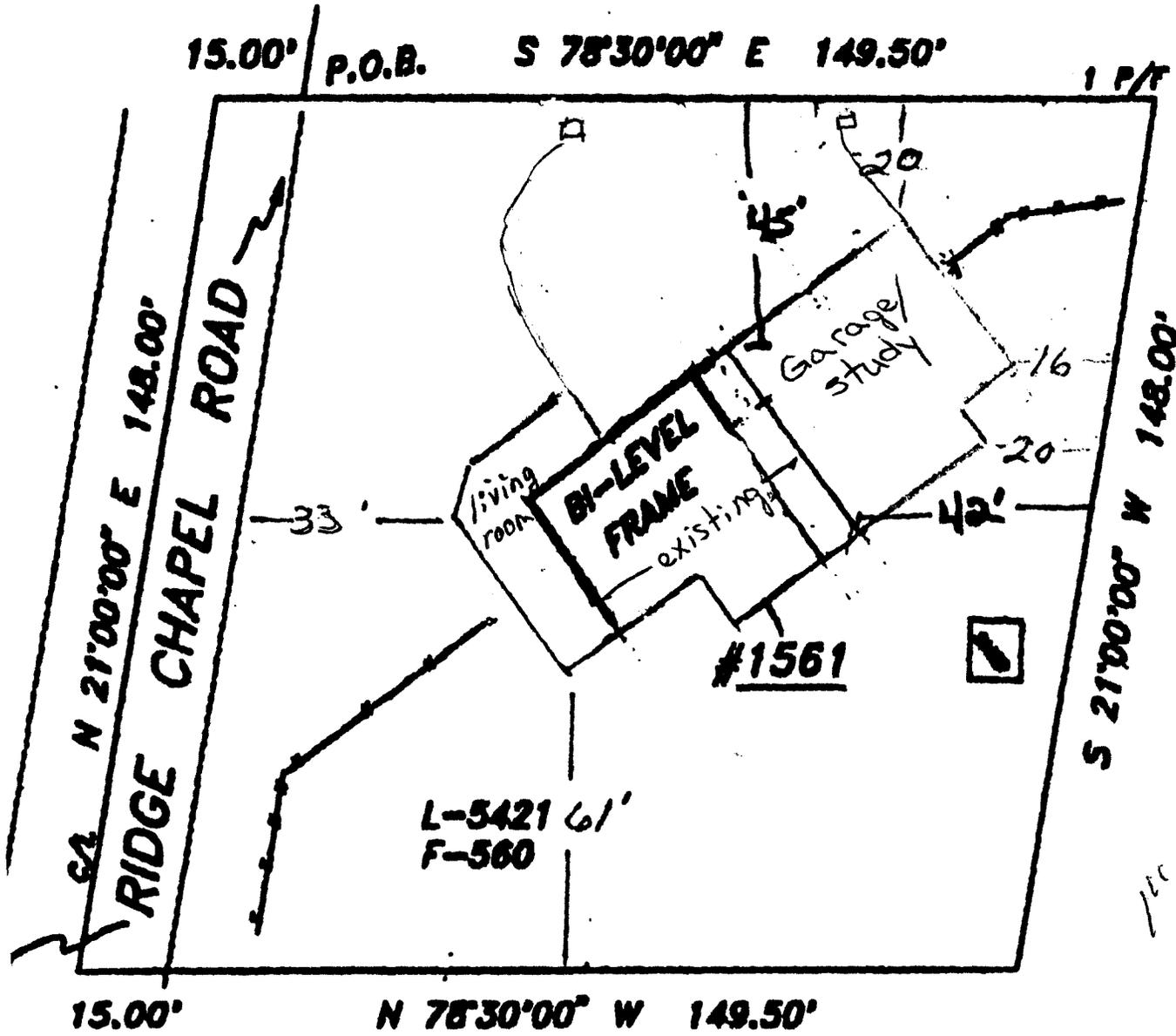
For Office Use Only

Application accepted by Anne Arundel County, Office of Planning and Zoning:

[Signature]
Signature

Aug 1, 2006
Date

MATTHEWS TOWN ROAD



**RE: An Appeal From A Decision Of The
Administrative Hearing Officer**

A. RAY MARTIN

Petitioner

* **BEFORE THE**
*
* **COUNTY BOARD OF APPEALS**
*
* **OF ANNE ARUNDEL COUNTY**
*
* **CASE NO.: BA 67-06V**
* **(2006-0285-V)**
*
* **Hearing Date: February 27, 2007**
*

MEMORANDUM OF OPINION

Summary of Pleadings

This is an appeal from a decision of the Administrative Hearing Officer. This appeal is taken from the denial of a variance to perfect dwelling additions with fewer setbacks than required, on property known as 1561 Matthews Town Road, Hanover.

Summary of Evidence

Ms. Patricia Cotter, a planner with the Office of Planning and Zoning, presented the Board with her findings. She explained that the application pertains to the same property that was the subject of an earlier case (BA 46-00V) wherein the Board granted a modified variance of 10 feet to the 40 foot minimum front yard setback to permit the construction of a 24 x 40 foot addition. The AHO granted a modified variance of 15 feet to the 40 feet front yard setback in a decision dated June 1, 2000. The modification required a reduction in the size of the proposed addition to allow the construction of a 36' x 40' addition that will have a front yard setback of 25' in lieu of the 20' requested by the applicant. The subject site consists of 21,780 square feet, located at the southeast intersection of Matthews Town Road and Ridge Chapel Road. The applicant is proposing to perfect the construction of both a 40' x 40' two story addition with fewer front yard setbacks than required and a 12' x 40' living room addition with fewer side street setbacks than required. Article 18-4-501 of the Anne Arundel County Code requires a

setback of 40' from the front property line. The garage was constructed 20' from the front lot line. As such, a variance of 20' is required to the 40' minimum setback to the front lot line. Additionally, it further requires a minimum setback of 40' to the corner side lot line. The site plan indicates a setback of 33' to the side street lot line along Ridge Chapel Road. As such, a variance of seven feet is required. The property is nonconforming with respect to the minimum lot size (40,000 square feet) requirements for a lot located in an R1-Residential district. The lot is improved with a single-family dwelling that was constructed at a diagonal across the lot. The existing dwelling met all the required building setback requirements for an R1 district prior to the construction of the additions.

Subsequent to the both the AHO's decision and the Board's decision, the applicant constructed a 40' x 40' addition without building permit approval that is 20' from the front property line in lieu of the 40' minimum front yard requirement. The size and location of the addition was not modified as set forth in the Board's decision. Additionally, the applicant started construction, without a building permit, of a 12' x 40' L-shaped living room addition on the west side of the dwelling.

While the Office of Planning and Zoning would concede that there are unique physical conditions inherent to this lot, the applicant's request is not the minimum necessary to afford relief. In the Board's decision dated November 16, 2000, the Board determined the minimum variance for this lot. The Board's decision was simply disregarded. The garage addition more than doubled the size of the dwelling. The Health Department has reviewed the application and offered no objection. The Soil Conservation District deferred their review to Office of Planning and Zoning; however, they noted that an approved sediment and erosion control plan may be required prior to construction. Finally, the Maryland Aviation Administration noted that the property is located outside of the BWI Airport Noise Zone, but may fall within the five-mile

radius of the airport perimeter. Therefore, prior to the issuance of any building permits, the applicant must obtain an Airport Zoning Permit. Ms. Cotter recommended denial of the variance requests.

Ms. Cotter stated that she conducted a site visit today. She drove past the front of the house and the side street. The construction of the garage addition is complete and she believes that the footing holes have been dug for the living room addition. She observed structures that are not on the site plan (Co. Ex. 4), including a large deck attachment behind the living room addition area, decking at the corner of the rear yard and a possible shed on the eastern side adjacent to the garage. The site may exceed coverage requirements for an R1 district.

Mr. A. Ray Martin, the Petitioner, stated that his community is important to him. His neighbors signed petitions (148 in all) requesting completion of the additions. In 2000, prior to construction, the Administrative Hearing Officer heard testimony, on the variance requested for the garage addition. He was granted a variance to build within 25 feet of the road. At that time, the County stated that the structure would be dangerous to pedestrians and cars if placed close to the road. He disagreed and appealed that decision to the Board. The Board required that the structure be set back at least 30 feet from the road. He created a model to better demonstrate the course of construction and administrative events on his property. He received a permit to build a stairwell, a bedroom addition and a walkway. He also applied for and received a deck permit. He notched the rear of the garage addition to accommodate a tree. He redrew the addition with the front corner missing after the Board's decision. He described his frustrations with the Department of Inspections and Permits. The recent Administrative Hearing Officer's decision stated that he is detrimental to the orderly process. He described a large pole that is closer to the road than his addition. Trees screen his house most of the year. It is not a problem for the community. He has placed asphalt in front of the garage addition. His garage addition is

beautiful. The upstairs consists of a study and a computer room. He wants to build a nice living room, which will not be detrimental to the community. He realizes that it was not a good thing to have built the garage addition prior to the issuance of all permits. His property meets the character of the neighborhood.

Ms. Michele Moore, one of the Petitioner's co-workers, testified in support of the variance application. She values rules and regulations. However, she believes that there should be fair and equitable restitution that will commensurate with the violation.

All testimony was stenographically recorded and the recording is available to be used for the preparation of a written transcript of the proceedings.

Findings and Conclusions

Unfortunately, this Board has been required to preside over cases where the property owners and others request permission with unclean hands. In this case, the Petitioner's hands are filthy.

Mr. Martin asked for and received a variance, albeit modified, to construct an addition on his home in November 2000. He did not appeal the decision of the Board in that case and it became a final order. Mr. Martin, apparently frustrated by the permitting regulations, ignored the Board's decision and built his addition as he saw fit—without permits and over the objections of County staff and stop work orders. He does not respect the rule of law and the place of regulation in an orderly society. We fully expect that he will violate the terms of this decision and will continue to be the subject of further enforcement action. That said, we turn to the requested variances.

Mr. Martin is asking for a variance to perfect a 40 x 40 foot two-story addition, including a garage (hereinafter, the "garage addition"), within the required front yard setback. He is also requesting a variance to perfect a 12 x 40 foot living room (hereinafter, the "living room

addition”) within the required side yard setback. Both variances are denied, for different reasons.

The Garage Addition

The Petitioner is barred from further relief regarding his garage addition request. This request is barred by *res judicata*, and the related doctrine of collateral estoppel. The Board has heard this case, has decided this case and is not required to re-hear and re-decide cases—particularly ones decided seven years ago. These concepts are derived from the larger jurisprudential demand that properly entered judgments be regarded as final. Therefore, a judgment between the same parties (and successors in interest) is a final bar upon the same cause of action, and is conclusive, not only as to all matters that have been decided in the original suit, but as to all matters which with propriety could have been litigated in the first suit. *See, Jack v. Foster Branch Homeowner’s Ass’n.*, 53 Md. App. 325; 452 A.2d 1306 (1982).

There are no new matters at issue in this appeal. The Petitioner is simply asking again for relief granted, in part, previously. The Board’s decision in Case No. BA 46-00V stands, although given the despicable behavior of the applicant, it would be equitable to deny his request, *in toto*.

The Living Room Addition

The Petitioner is requesting a variance of seven feet to the minimum side yard setback requirement for property within the R1 District. *See*, Code, Section 18-4-501. The Petitioner is proposing to construct a living room addition measuring 12 x 40 feet in the west side yard. The addition would be set back 33 feet to the side street lot line of Ridge Chapel Road. As such, a variance of seven feet is requested. In order to grant the request, the Board must find first that the Petitioner has complied in all respects with the provisions of Section 3-1-207.

The Board finds that some unique physical conditions exist on this property. *See, id.*, Section 3-1-207 (a)(1). The property is a corner lot that comprises only 21,780 square feet, which is considerably smaller than the 40,000 square foot minimum lot size for properties zoned R1. The improvements on the property are located diagonally across the site and create some difficulty in locating additions to the side of the structure without violating the required 40 foot setbacks. However, these unique physical conditions have not rendered unreasonable the possibility of developing the lot in strict conformance with the Code. *See, id.* In fact, the lot is well developed with a residence and accessory structures.

The Board finds further that there are no exceptional circumstances in this case that require the grant of a variance to avoid practical difficulty or unnecessary hardship and to enable the applicant to develop the lot. *See, id.*, Section 3-2-107 (a)(2). As stated previously, this property is well developed with a residence and accessory structures. The Petitioner has received a variance to permit further construction, which encroaches into the minimum required front yard setback, along the east side of his house. The Petitioner merely desires additional improvement to his property. There are no circumstances that necessitate those improvements. The Petitioner mentioned that he desires the modified living room to accommodate visits by his elderly mother. We are certain, from our review of the evidence and testimony presented (particularly the photographs), that impaired individuals are not barred from visiting the residence. Also, the site plan shows adequate room for further improvements to this property that would accommodate easy access to the residence without violating the setback requirements.

The Board also finds that the Petitioner's current request is not the minimum necessary to afford him relief. *See, id.*, Section 1-207(c)(i). The Petitioner's garage addition has more than doubled the size of the dwelling on the property. Further increases to the dwelling on site in the form of a 12 x 40 foot living room are simply not a minimum to grant relief to this Petitioner.

He has received relief from the Code and has been permitted to encroach into the front yard setback with a reasonably sized structure. However, he simply builds what he wants and has no consideration for the rule of law. If this Petitioner appears before the Court in matters related to these discussed here, the Court can be assured that the Petitioner deserves harsh treatment for the violations committed.

We also find that the grant or the requested variance would be detrimental to the public's welfare. *See, id.*, Section 3-1-207 (c)(2)(v). The grant of this variance would make legal the Petitioner's unlawful acts. Furthermore, the public's welfare is harmed by unnecessary encroachments toward the roadway. The Code requires generous setbacks from the roadways for many reasons. It is not appropriate for this Petitioner to question and then disregard the legislative requirements. He, like all of us, must live within the laws of our society. Similarly, we find that the grant of the requested variance would alter the essential character of this neighborhood and would substantially impair the appropriate use or development of adjacent properties. *See, id.*, Sections 3-1-207 (c)(2)(i) and (c)(2)(ii). If the Petitioner's requests were granted, the variances would, in effect, change the zoning designation of the property by permitting gross reductions in the required setbacks to the roadways. While variances can be permitted, and have been permitted on this property, variances that have the effect (as here) of nullifying the Code criteria should not and must not be granted.

Since this property is not located within the Critical or Bog Protection Areas, we need not consider the requirements of Section 3-1-207 (c)(2)(iii) and (c)(2)(iv).

ORDER

For the reasons set forth in the foregoing Memorandum of Opinion, it is this 30th day of May, 2007, by the County Board of Appeals of Anne Arundel County, ORDERED, that the

Petitioner's request for a variance of 20 feet to the 40 foot minimum front yard setback and a variance of seven feet to the 40 foot minimum side yard setback is hereby **DENIED**.

Any appeal from this decision must be in accordance with the provisions of Section 604 of the Charter of Anne Arundel County, Maryland.

If this case is not appealed, exhibits must be claimed within 90 days of the date of this Order; otherwise, they will be discarded.

Any notice to this Board required under the Maryland Rules shall be addressed as follows: Anne Arundel County Board of Appeals, Arundel Center, P.O. Box 2700, Annapolis, Maryland 21404, ATTN: Mary M. Leavell, Clerk.

COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY



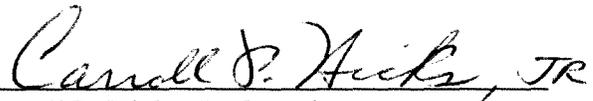
William C. Knight, III, Chairman



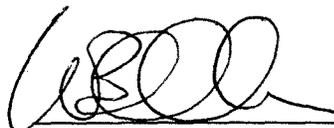
Arnold W. McKechnie, Vice Chairman



John W. Boring, Member



Carroll P. Hicks, Jr., Member



William Moulden, Member

A. C. Pruski

Andrew C. Pruski, Member

James E. Rzepkowski

James E. Rzepkowski, Member