

FREDERICK COUNTY BOARD OF APPEALS
STAFF REPORT VIRTUAL MEETING ON JULY 22, 2021 @ 7pm

Case Number: B265274 - B-21-05

Applicant: Richard Kirby

Appeal: Requests relief of 1'.4" from the 10' side yard setback and 15' from the 30' rear yard setback to construct a 386 sq.ft. addition to the rear of the existing dwelling in accordance with Section 1-19-3.220 Variances and Section 1-19-6.100 Design Requirements of the Frederick County Zoning Ordinance. If approved the variance would create a 8'.8" side building restriction line and a 15' rear building restriction line.

Location: The property is identified as, 6601 Jefferson Blvd, Frederick, MD 21703, Tax Map 76, Parcel 0223, Tax ID # 24449777, zoned Low Density Residential (R3)

Planning Region: Middletown

Zoning District: Low Density Residential (R3)

Comp. Plan Designation: Rural Community

Applicable Ordinances: Sec. 1-19-3.220 Variances
Sec. 1-19-6.100 Design Requirements

Background:

The Applicant's property is zoned Low Density Residential (R3) and is .78 acres in size. The required setbacks for this community are: front, 30 ft., side 10 ft. and rear 30 ft. Previous BOA action on this property includes (B-91-77 / December 17, 1991) approved a variance of 2' from the 10' side yard setback.

Proposal:

The Applicant is requesting a variance of 1.4" from the 10' side yard setback and 15' from the 30' rear yard setback to construct a proposed addition to the rear of the existing dwelling in accordance with Section 1-19-3.220 Variances. If approved it would create a side yard setback of 8'8" and a rear yard setback of 15'.

General Criteria - Variance:

Under the provisions of Section 1-19-3.220 (C) of the Frederick County Zoning Ordinance, the Board of Appeals shall not grant a variance unless and until a public hearing is held and all of the following criteria are met:

(A) The Board of Appeals may authorize a variance in height, lot area and yard regulations.

The Applicant states that he understands this requirement.

- (B) An application for a variance shall be filed with the Board of Appeals only after refusal of zoning approval or an adverse determination has been issued by the Zoning Administrator.

The Applicant states that he understands this requirement.

- (C) The Board of Appeals shall not grant a variance unless and until a public hearing is held and all of the following criteria are met:

The Applicant states that he understands this requirement.

- (1) First, the Board of Appeals shall find that special conditions and circumstances exist which are unique to the land or structure involved and which are not applicable to other lands or structures in the same district.

A significant lot shape constraint exists on the garage side of the dwelling where the rear lot line shifts dramatically toward the dwelling thus restricting the available building area. However, the proposed relief would not exceed the rear building line established by the house next door.

- (2) Upon making this finding the Board of Appeals shall also find that the following criteria are met:

- (a) That the special conditions and circumstances do not result from the actions of the applicant; and

This request is based on the shape of the land with its constrictive rear property line. The ~1950 addition built on the North Side of the property by a previous owner (prior to the currently adopted ordinance) directs the functional alignment of the proposed space. This placement is less impactful upon the root zone of an adjacent, highly desirable tree, preserves an existing bedroom egress window, and avoids the relocation of the utility company's overhead electrical service.

- (b) The literal interpretation of the provisions of this chapter would result in unreasonable hardship and deprive the applicant of rights commonly enjoyed by other properties in the same district under terms of this chapter; and

The owner is desiring hobby and storage space with an expansion to the rear of the existing garage. Strict adherence to the setbacks would result in a reduced, less functional footprint off the back of the house while requiring tree removal, the relocation of the overhead electrical service, as well as the relocation or alteration of bedroom egress windows. The resulting hardship would direct efforts toward a separate accessory structure. However, the proposed expansion with its 8'8" side yard and 15' (+/-) rear setback would be less impactful upon its neighbors than a separate accessory building requiring only six foot setbacks from all property lines.

- (c) That granting the variance will not confer on the applicant any special privilege that is denied by this chapter to other lands or structures in the same district; and

The Applicant states that the approval of this Variance would not confer any special privilege that other land owners are not entitled to.

- (d) That the granting of the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The Applicant states that the Variance will be in harmony with the neighbors and will not be detrimental to the public welfare.

- (D) In granting the variance, the Board of Appeals may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, is a violation of this chapter.

The Applicant states that he understands this requirement.

- (E) Under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of this chapter in the zone involved, or any use expressly or by implication prohibited by the terms of this chapter in said zone.

The Applicant states that he understands this requirement.

- (F) Under no circumstances shall the Board of Appeals grant a variance to a nonconforming structure for the portion of structure determined by the Zoning Administrator to be nonconforming.

The Applicant states that he understands this requirement.

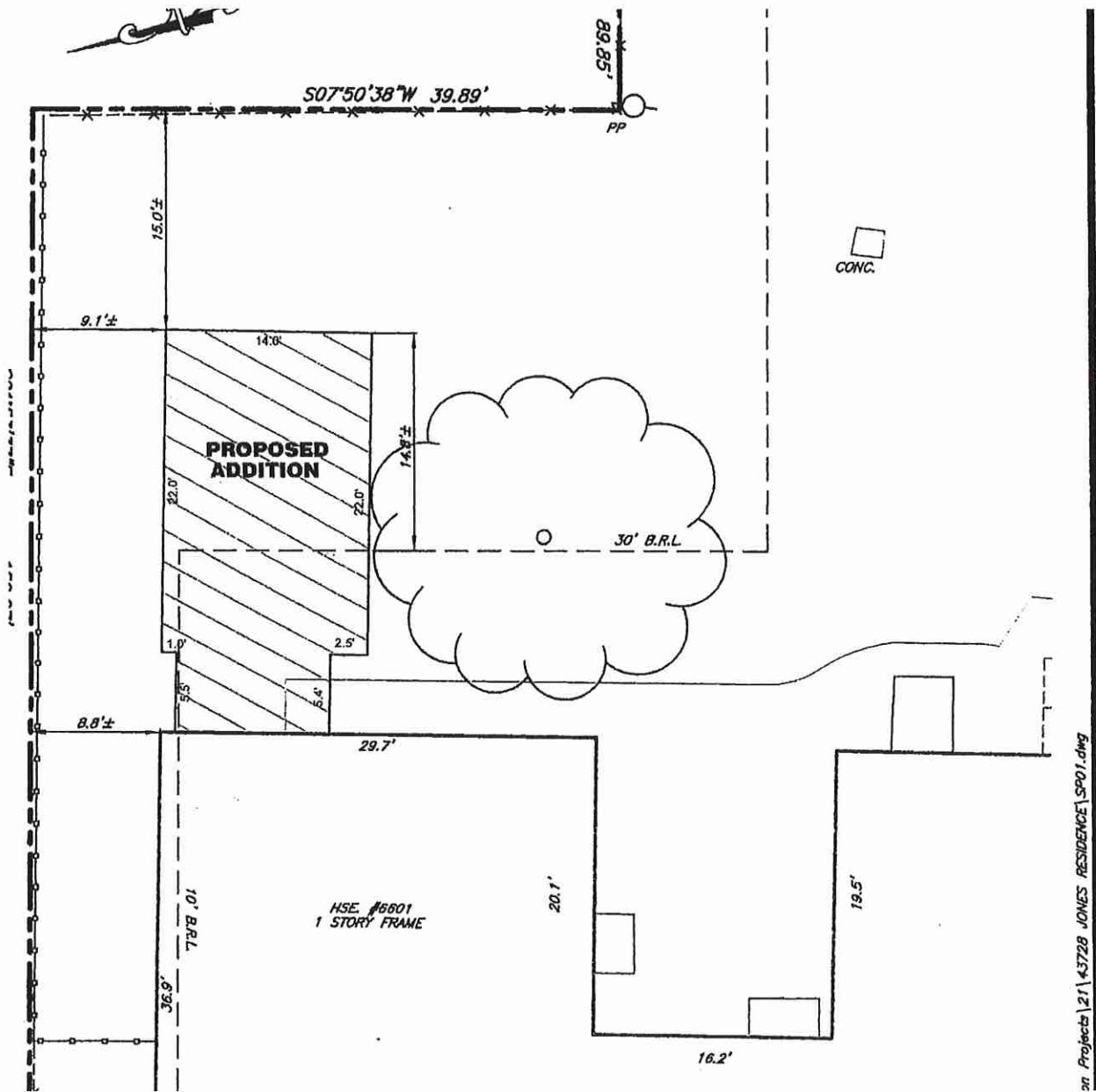
- (G) A decision of the Board of Appeals granting a variance will be void 2 years from date of approval by the Board of Appeals unless the use is established, a building permit is issued, construction has begun, or final site development plan approval has been received in accordance with the terms of the decision. Upon written request submitted to the Zoning Administrator no later than 1 month prior to the expiration date and for good cause shown by the applicant, a 1 time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.

The Applicant states that he understands this requirement.

Actions Needed:

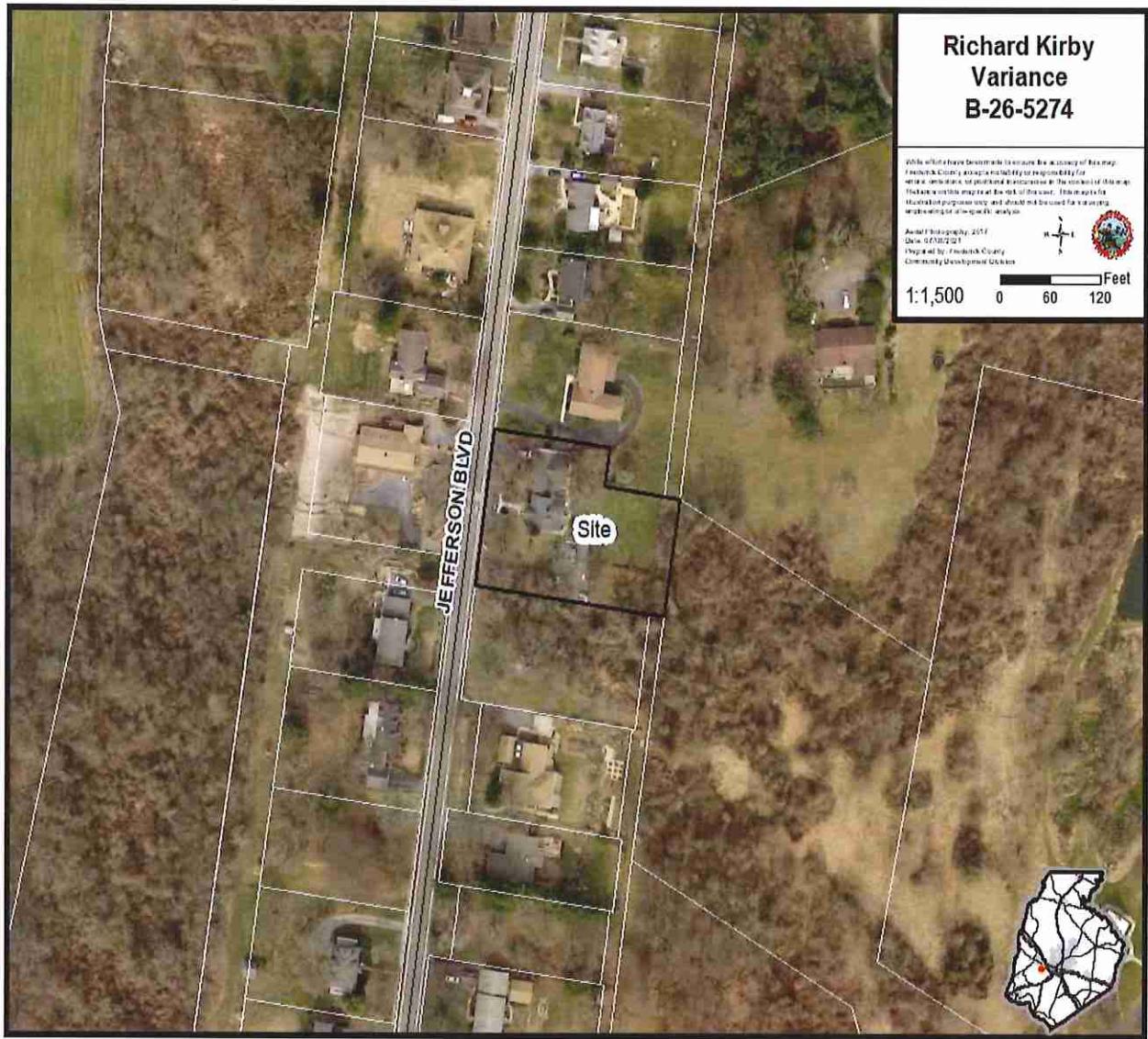
Staff requests that the Board review the general criteria for a Variance under Section 1-19-3.220 Variances, and Section 1-19-6.100 Design Requirements and render a decision on the Applicant's request for a 1'.4". variance from the 10 ft. required side yard building restriction line and a 15 ft. variance from the 30 ft. rear yard restriction line.

Attachment 1



GIS Maps





**Richard Kirby
Variance
B-26-5274**

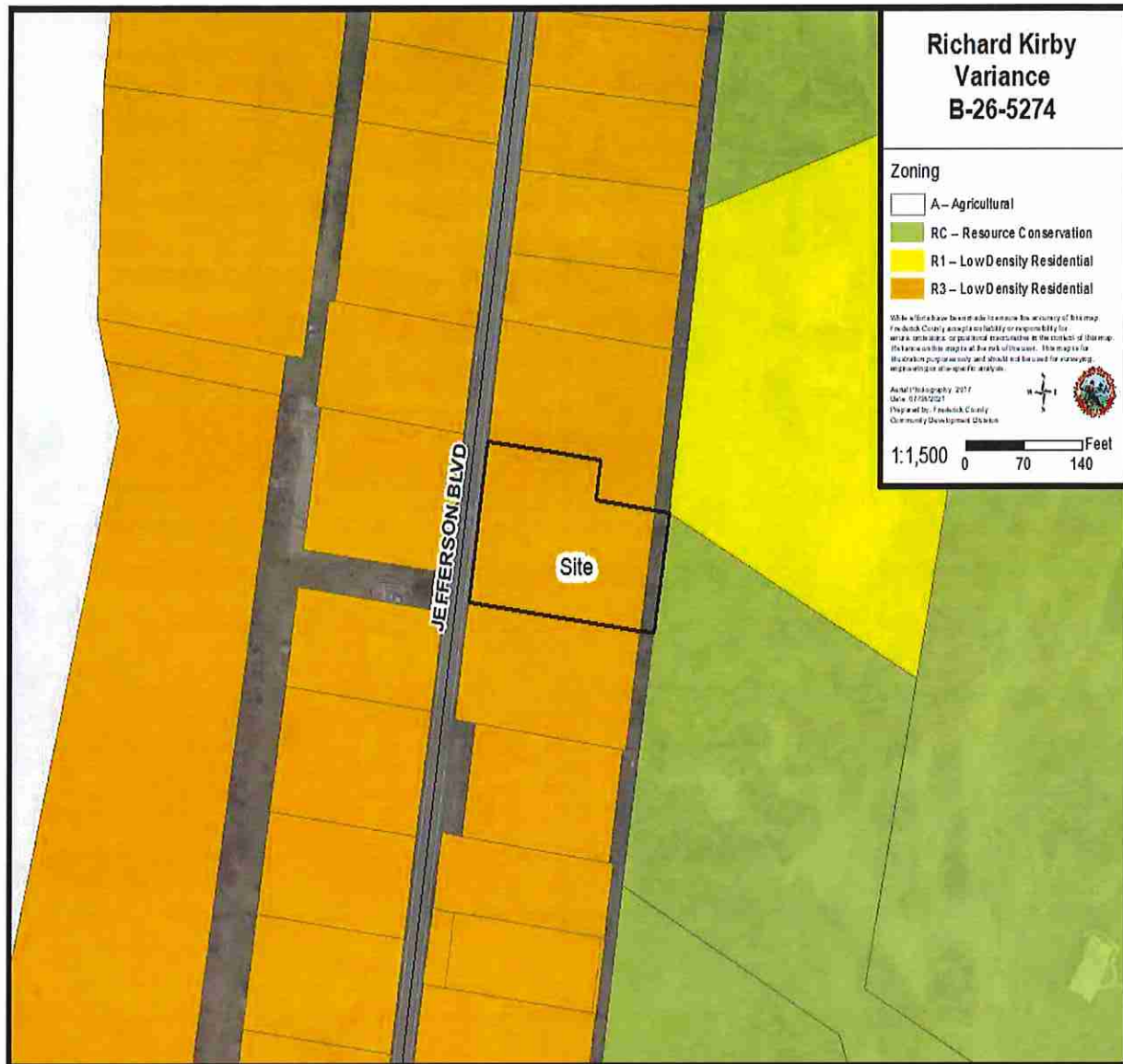
While we have endeavored to ensure the accuracy of this map, Frederick County accepts no liability for responsibility for errors or omissions, or potential inaccuracies in the use of this map. The map is for informational purposes only and should not be used for any other purpose without the express written consent of the County.

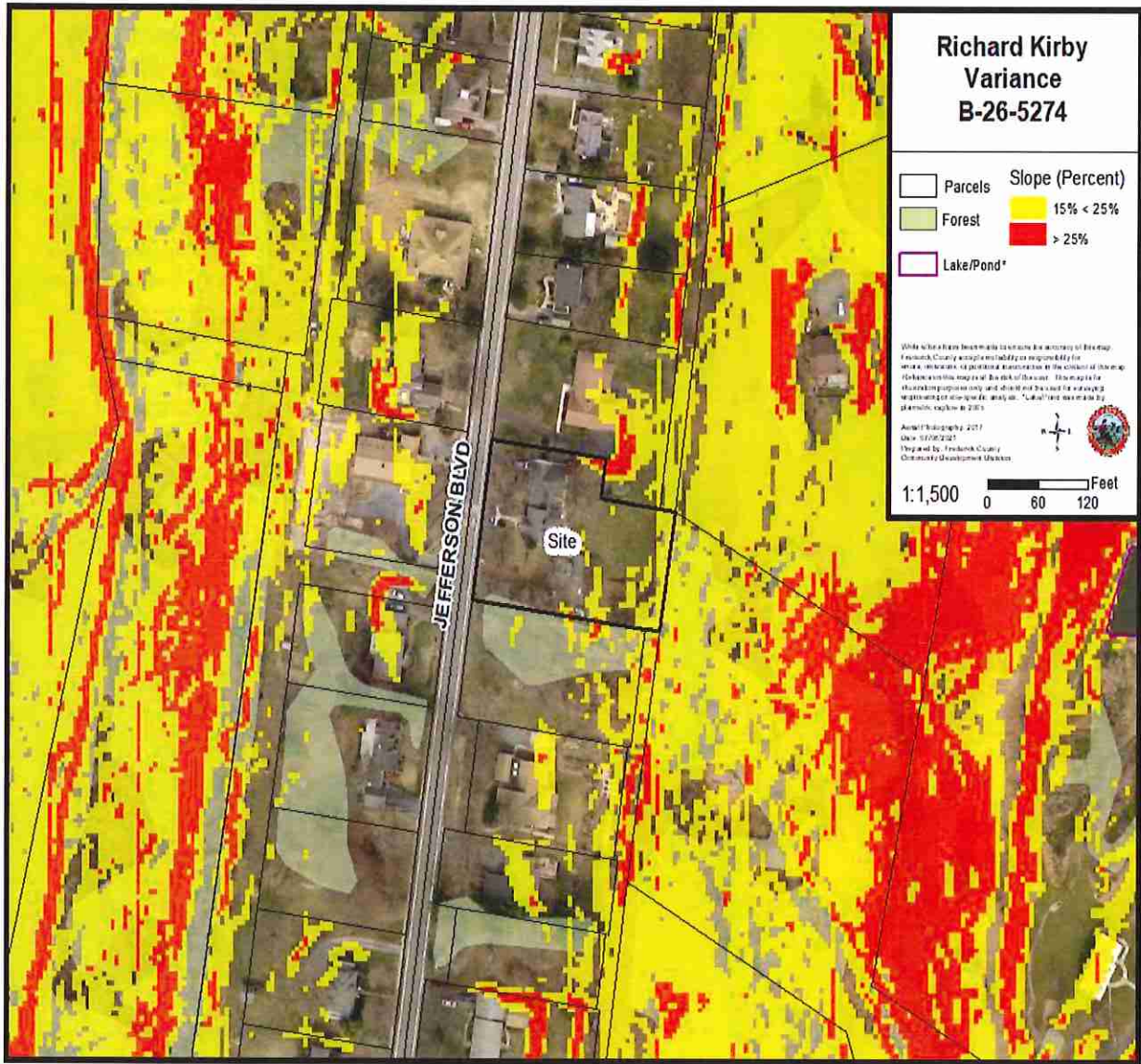
Aerial Photography: 2016
Date: 07/02/2017
Prepared by: Frederick County
Community Development Division



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THIS IS NOT A PERMIT
Do not start work or use the property if this application
is approved until you get a permit or Certificate of Occu-
pancy from the Dept. of Permits & Inspections.

FREDERICK COUNTY BOARD OF APPEALS
WINCHESTER HALL FREDERICK, MARYLAND 21701

694-1139

FINDINGS AND DECISION

WHEREAS, an application was filed by Sam K. & Gail G. Jones, B-91-77, requesting a variance of 2 ft. from the 10 ft. side yard setback requirement in order to construct an addition to their existing dwelling located on the east side of Jefferson Blvd., 1/2 mile south of Maryland Avenue, and

WHEREAS, a public hearing on said request was duly advertised and held on Tuesday, December 17, 1991 at which time Mr. Jones appeared and presented the request, and

WHEREAS, after considering all the evidence and testimony at said hearing, and the Board having inspected the premises, the Board hereby makes the following findings of fact:

- A. The land in question is zoned R-3 Residential.
- B. The existing structure was constructed in 1950, prior to zoning and therefore is classified as a nonconforming structure.
- C. The proposed addition would continue the existing line of the dwelling and be an extension of it in such a way as the existing 8 ft. setback would be maintained for the length of the dwelling.
- D. The applicant stated that the floor plan of the existing dwelling would not permit an addition that was aesthetically in keeping with the neighborhood elsewhere on the property.
- E. The applicant further stated the garage was purely for personal use and it was not intended for any commercial type purposes.
- F. The Board finds that the need for the variance was not the result of the actions by the applicant but the structure was an existing nonconforming structure that was in existence prior to the implementation of zoning within the County.
- G. The Board finds that the proposed variance would not increase the nonconformity of the structure and that the conditions requiring the variance are unique to the property in question and therefore notes that special privileges will not be afforded to the applicant upon the granting of the request.
- H. The Board finds that there are unique circumstances peculiar to this property due to the nonconforming structure and the existing layout of the lot.
- I. The Board finds that denying the request would create an undue hardship on the applicant as he would not be able to create an aesthetically compatible addition to the existing dwelling without the variance.

NOW, THEREFORE BE IT RESOLVED that based upon all these findings, the Board of Appeals hereby grants the variance of 2 ft. from the 10 ft. side yard setback requirement in order to expand the nonconforming structure.

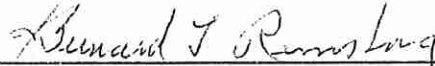
Said action granting the variance was approved unanimously by the Board of Appeals on Tuesday, December 17, 1991 upon a motion by Dr. Wood, seconded by Mr. Matthews.

Respectfully submitted:



Michael C. Thompson
Secretary

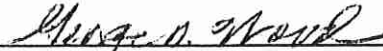
Adopted by the Board of Appeals this 27th day of January, 1992.



Bernard L. Remsburg, Chairman

ABSENT

Chris T. Matthews, Vice Chairman



George D. Wood, Member

SECTION 1-19-46 (g)

A decision of the Board granting a variance or a special exception will be void one year, from date of approval unless the use is established or a building permit is issued and construction has begun and is in accordance with the terms of the decision.

