

VARIANCE CASE NO. 002-16
OFFICIAL DECISION
BOARD OF APPEALS
TOWN OF POOLESVILLE, MARYLAND

Applicant: Rich & Donna Khalil
17632 Zullo Road
Poolesville, Maryland 20837
APPLICANT

Request: To grant a variance to allow the construction of a screened porch and deck which will encroach the Building Restriction Line on the property located in the R-3/4 zone under the Zoning Code of the Town of Poolesville.

Location: 17632 Zullo Drive
Poolesville, Maryland

An application was filed by Rich & Donna Khalil, the owner of the subject parcel at 17632 Zullo Road, for a variance from the restriction on allowing the construction of a screen porch and deck on the property which will encroach into the Building Restriction Line.

The Board of Appeals held a public hearing on September 27, 2016 at 7 p.m. on the application, and based on the record, in compliance with the State Open Meetings Act, the Board granted the request as set forth in the written Official Decision of the Board.

Notice of the date, time and place of the hearing on the consideration of the variance request was sent to contiguous property owners and published in the appropriate

newspaper of general circulation. Sitting for the Board were Chairwoman Pilar Garrett, Ralph Hitchens, Dennis Minor and alternate member, Patricia Wolford.

SUMMARY

At the public hearing on this application, the Chairwoman read the contents of the official file into the record of this matter and then called upon the Applicant to present its case. The Applicant was represented at the hearing by the contractor for the project John Barrett from Archadeck of Montgomery County. Mr. Barrett gave an overview of the application and outlined the specific areas which require a variance for construction encroaching the Building Restriction Line. He indicated that the subject property is unique and peculiar due to the fact it is a larger parcel, but the house was constructed in an area which is very close to one of the property lines. However the adjacent property on this side of the property is publically owned and under a conversation easement. It is on this side of the property that the Applicant wishes to construct the porch and deck pursuant to the plans submitted to the Board. Mr. Barrett indicated that a hardship was created by the house placement on the property and that while the proposed construction will encroach past the Building Restriction Line, it is on a side of the property which will not cause any adverse impact due to the nature of the adjoining property.

Mr. Barrett further indicated that the proposed construction will match the architecture of the existing home and that most of the construction will fall outside the Building Restriction Line.

The Town Engineer expressed concern about any encroachment or disturbance, even during construction, of the existing conservation area on the adjacent property. He further suggested means by which such disturbance could be avoided.

The Board had questions whether other designs were considered to avoid the construction in the Building Restriction Line area and the merits of whether such an issue presents an actual hardship to justify the granting of a variance. Mr. Barrett indicated that other designs were considered but were rejected by the owners.

The Board then reviewed the minutes and recommendation from the Poolesville Planning Commission on this subject.

A member of the public was present to testify and indicated his support to the application

After reviewing all of the information submitted and the testimony presented, the Board voted 3-0 to grant a variance to allow the construction of the proposed screened porch and deck, as outlined in the application, presentation and testimony, but specifically noted that such approval was conditioned on the owner erecting a construction fence along the length of the property denoting the property line (conservation area on the adjacent property) and restricting access and use thereof, during the term of construction.

FINDING OF FACT

The Board of Appeals met in public session, pursuant to the requirements of the Maryland Open Meetings Act, to deliberate upon the application immediately following the public hearing. In considering the criteria for granting a variance contained in Section

10 (D)(3) and Section 8 (F) of the Zoning Code, the Board deliberated on the testimony and evidence presented. The Board members each expressed their position on the proposed variance.

The Board finds that the shape of the parcel and the location in which the house was constructed does create a circumstance which would make it difficult to construct without infringing on the Building Restriction Line – and that this creates a hardship on the Applicant. The Board finds that the Applicant has met the burden of proof as required under the requirements of the Zoning Code for the granting of a variance. The application, testimony, and evidence comprising the record of this case are hereby included by reference in this decision.

Mr. Hitchens made a motion to grant the requested variance to the construction of the proposed screened porch and deck, as outlined in the application, presentation and testimony, but specifically noted that it is conditioned on the erection of construction fence pursuant to the terms of this opinion.

The motion was seconded by Mr. Minor and upon a vote by the Board the decision was three (3) in favor of the motion and zero (0) opposed. The alternate member, Ms. Wolford, was opposed.

RESOLUTION

The Board is bound by the provisions of Section 10 (D)(3) X of the Zoning Ordinance of the Town of Poolesville, Maryland relative to the granting of a variance. This Board finds that the criteria necessary for granting a variance has been met. In accordance with the findings of fact, testimony and record of this case, and based on the

applicable law and reasoning expressed herein, the Board of Appeals of the Town of Poolesville, Maryland, grants by the Resolution contained hereafter, by a decision of 3-0.

BE IT RESOLVED by the Board of Appeals for the Town of Poolesville, Maryland that the Opinion stated above be adopted as the Resolution required by law as its decision in the above-entitled matter.

The foregoing Resolution was approved on September 27, 2016 by unanimous vote.

Pilar Garrett, Chairwoman