

RE: RONALD AND PAMELA TATE,
LEGAL OWNERS/PETITIONERS
PETITION FOR VARIANCE
SE side of Calgary Court;250 feet E of,
The c/1 of Meadow Heights Road
(7 Calgary Court)

2nd Election District
4th Councilmanic District

* BEFORE THE
* BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
*
* Case No. 10-156-A

* * * * *

OPINION

This case comes before the Board of Appeals as a result of Petitioners, Ronald and Pamela Tate seeking zoning approval in the form of a Variance for a two car garage at 7 Calgary Court that was previously denied by the Deputy Zoning Commissioner. The Variance request is from Section 1B02.3.B (R6 1963 Regulations – Sections 211.3 and 211.4) to permit a proposed addition with a side yard setback of 3 feet (and a combination of 14 feet) in lieu of the required 8 feet (and combination 20 feet); and rear yard setback of 20 feet in lieu of the required 30 feet. A hearing was held before the Baltimore County Board of Appeals on June 16, 2010. Petitioners request was unopposed.

BACKGROUND

The Petitioner filed a Petition for Administrative Variance and the subject property having been posted on November 29, 2009 and there being no request for a public hearing, a decision was made by the Zoning Commissioner, who denied the request. The Petitioner appeared before this Board, with J. Carroll Holzer entering as counsel on the day of the hearing. At this hearing, Petitioner testified regarding the planned garage construction and submitted a

site plan, photographs and a map from the State Department of Assessment and Taxation showing the shape of surrounding lots.

DECISION

Maryland jurisprudence is well established regarding the factors to be considered when contemplating variance relief.

Baltimore County Zoning Regulations, Section 307.1, in pertinent part, states as follows:

"...(T)he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area...regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare...."

In *McLean v. Soley*, 270 Md. 216 (1973) the court established the following criteria for determining practical difficulty or unreasonable hardship:

- "1) Whether compliance with the strict letter of the restrictions governing various variances would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
- "2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
- "3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

Further, in *North v. St. Mary's County*, 99 Md.App. 502 (1994) the Court held that

"...the 'unique' aspect of a variance requirement does not refer to the extent of improvements on the property, or upon neighboring property. 'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography,

subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls." Id at 514

In the Court of Special Appeals in *Cromwell v. Ward*, 102 Md.App. 691 (1995), wherein the

Court writes:

...The Baltimore County ordinance requires "conditions ...peculiar to the land...and...practical difficulty...." Both must exist. ...However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. **It is only when the uniqueness is first established that we then concern ourselves with the practical difficulties...." Id. at 698.**

In requiring a pre-requisite finding of "uniqueness", the Court defined the term and stated:

In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.... Id. at 710.

Petitioner's Argument

Petitioner bases his request for a variance on the fact that he requires a two car garage adjacent to his home because his elderly mother lives at the residence and needs the garage to be close to the home. The Petitioner also states that the garage is necessary due to the unsafe nature of the neighborhood and that his wife can access the house directly from the garage when she returns

home after dark. The Petitioner further testified that several homes in his neighborhood have similar garages.

The Petitioner also notes that his lot is triangular in shape, which presents difficulty in complying with set back requirements on the narrow side of his lot where the current driveway would lead to the proposed garage. The Petitioner infers that this triangular shape provides the uniqueness contemplated in *Cromwell* which makes granting the requested variance justified.

While the Board does not dispute that Petitioners need for the proposed two car garage is not valid, the Board must first make a determination as to whether the Petitioners property is "unique" as spelled out in *Cromwell*. The Petitioner points out that the shape of his property makes it unique, however a close examination of the map showing the shape of the lots in the neighborhood reveal that the triangle shape of the Petitioner's lot is quite common in the area.

While the Board still concedes that the Petitioner's situation may constitute "unique" circumstances, we are not satisfied that the subject property has unique physical characteristics that would satisfy the requirements found in *Cromwell*.

CONCLUSION

This Board is not persuaded that the Petitioner has illustrated uniqueness of its parcel to deviate from standing zoning requirements its property. Consequently, Petitioner's requested Variance relief is DENIED.

ORDER

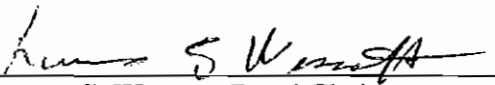
THEREFORE, IT IS THIS 5th day of October, 2010 by the Board of Appeals of Baltimore County


ORDERED that the Petitioner's request for a variance from Section 1B02.3.B (R6 1963 Regulations – Sections 211.3 and 211.4) to permit a proposed addition with a side yard setback

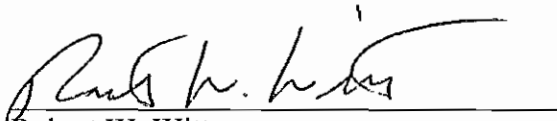
of 3 feet (and a combination of 14 feet) in lieu of the required 8 feet (and combination 20 feet);
and rear yard setback of 20 feet in lieu of the required 30 feet. is hereby **DENIED**.

Any petition for judicial review from this decision must be made in accordance with Rule
7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Lawrence S. Wescott, Panel Chair


Andrew M. Belt


Robert W. Witt