

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
W/S Oak Croft Drive, 305' N c/line of		
Charmuth Road	*	ZONING COMMISSIONER
(1206 Oak Croft Drive)		
9th Election District	*	OF
3 rd Council District		
	*	BALTIMORE COUNTY
Stamatoula Mavrophilipos		
Petitioner	*	Case No. 2009-0160-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owner of the subject property, Stamatoula Mavrophilipos. The Petitioner requests a variance from Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow an existing detached accessory structure (garage) to have a height of 17 feet in lieu of the maximum allowed 15 feet. The subject property and requested relief are more particularly described on the site plan submitted, which was accepted into evidence and marked as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the request were Stamatoula Mavrophilipos, and her husband, Konstantinos Mavrophilipos, property owners. Appearing as Protestants in the matter was the Dulaney Valley Improvement Association, Inc. represented by their Board of Director members, Larry Townsend, Dr. Robert Cordes and Maxwell R. Collins, II, Esquire.

By way of background, the property known as 1206 Oak Croft Drive, just north of Charmuth Road near Dulaney Valley Road in Lutherville, was the subject of prior Case No. 08-432-A. In that case, the same Petitioner was granted variance relief from B.C.Z.R. Section 400.1 to permit a garage to be located in the side yard in lieu of the requested rear yard. To the extent applicable, the findings and conclusions set forth in my Order of June 6, 2008 in that case are adopted by reference and incorporated herein. Moreover, the relief in Case No. 08-432-A was

subject to certain restrictions which were conditions precedent to the relief granted. Pertinent here was Restriction No. 2 that stated in part:

“The proposed garage shall be built in terms of ‘normal overall garage proportions’ in massing. That is to say that the garage will be built with a door height not to exceed 8 feet and of materials and colors that match the front of the principal structure to assure consistency.”

Subsequently in the fall of the year, Petitioner’s nightmare began when the Department of Permits and Development Management received inquiries questioning the accessory structure’s compatibility and excessive height. Code Enforcement Officer Dennis Rioux visited the site on October 28, 2008 and again on November 6, 2008 and after measuring the structure’s height to be 16'-10", issued a Code Enforcement Notice informing the Petitioner that the height be reduced to 15 feet or a variance obtained before proceeding.¹ Mr. Mavrophilipos testified that he has paid substantial sums of money, applied for and obtained a building permit (Permit No. B697682) for the construction of a 16' x 26' x 15' garage. He estimated \$20,000 would be expended if he would be required to lower the roof structure and indicated the garage would no longer be functional for storage, one of its intended purposes, and may ultimately result in a flat roof structure. Moreover, he asserts that it was through inadvertence on his part that he exceeded the 15 foot height limitation by not including in his measurements the space between the structure’s first and second floors. The Petitioner now comes before me seeking relief as set forth above to allow completion of the structure with a height of 17 feet. Mr. Mavrophilipos testified at length as to the practical difficulty and unreasonable hardship he would endure if the variance were not granted, which would leave he and his wife in an untenable position.

¹ Opposition to garage heights is not uncommon. *See County Board of Appeals’* decisions in Case Nos. 04-255-A, 04-383-A and this Commission’s Orders in Case Nos. 06-219-A, 08-267-A, etc.

As noted above, several residents from the surrounding locale appeared in opposition to the request. They testified that they found the garage with its excessive height and 1:12 roof pitch offensive and out of rhythm with other structures in their immediate area. They believe that the Petitioner should be required to lower the height of the garage and incorporate a pitched roof that matches their principal dwelling in accordance with the regulations. Mr. Collins expressed amazement that the Petitioner would build the garage in violation of the regulations given the prior hearing and Order. He believes the Petitioner(s) are the authors of their own misfortune. Messrs. Collins, Townsend and Dr. Cordes testified that many in the community are opposed to the garage's overpowering size that, if allowed, would not be in keeping with the character of the community and would dominate an already largely developed lot.

To a certain extent, I am sympathetic to the Petitioner's plight; however, variance relief can be granted only if the requirements contained in Section 307 of the B.C.Z.R. are met. This section states that the Zoning Commissioner may grant variances:

... 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 of Baltimore County would result in practical difficulty or unreasonable hardship.

Variances are not favored under the law and presumed to be in conflict with the regulations. As stated in *Cromwell v. Ward*, 102 Md. App. 691, 703 (1995):

The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances.

After due consideration of all of the testimony and evidence presented, I find that the Petitioner's property is substantially similar to other properties as to size, shape, topography and

orientation. As such, it does not meet the requirements for a finding of uniqueness as set forth in *Cromwell*. I cannot decide this case based on “extenuating circumstances”. Having determined that no uniqueness exist as to the Petitioner’s property that would warrant the structure’s excessive height, I must therefore deny the variance requested by the Petitioner.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons set forth above, the relief requested shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 18th day of February 2009, that the Petition for Variance seeking relief from Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a detached accessory structure (garage) with a height of 17 feet, in lieu of the maximum allowed 15 feet, in accordance with Petitioner’s Exhibit 1, be and is hereby DENIED; and

IT IS FURTHER ORDERED that the Petitioner shall have ninety (90) days from the date of this Order to lower the height of the garage so as to be in compliance with Building Permit No. B6976892 and the Zoning Regulations. As set forth in the Office of Planning’s Zoning Advisory Committee (ZAC) comment, dated February 10, 2009, a copy of which is attached hereto, the Petitioner shall comply with architecture to be fitting with that of the community “such as pitched roof with building materials that match the current dwelling”.

Any appeal of this decision shall be taken in accordance with Baltimore County Code Section 32-3-401.

WJW:dlw

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County