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| <b>IN RE: PETITION FOR VARIANCE</b>     | * | BEFORE THE                  |
| S side of Rockdale Road, 1500 feet E of |   |                             |
| the c/l of Gunpowder Road               | * | DEPUTY ZONING               |
| 6 <sup>th</sup> Election District       |   |                             |
| 3 <sup>rd</sup> Councilmanic District   | * | COMMISSIONER                |
| (3807 Rockdale Road)                    |   |                             |
|   | * | FOR BALTIMORE COUNTY        |
| <b>Robert and Sally Carper</b>          |   |                             |
| <i>Petitioners</i>                      | * | <b>Case No. 2009-0170-A</b> |

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owners of the subject property, Robert and Sally Carper. Petitioners are requesting Variance relief from Sections 400.1 and 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed accessory building (garage) in the side yard and with a height of 18 feet in lieu of the required rear yard and with a maximum allowed height of 15 feet. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the variance request was Petitioner Robert Carper. Also appearing in support of the requested relief was a neighbor, David Stambaugh, of 3803 Rockdale Road. There were no Protestants or other interested persons in attendance at the hearing, though a letter in opposition to the requested relief was received and will be discussed further, *infra*.

This matter is currently the subject of an active violation case (Case No. CO0053788) in the Division of Code Inspections and Enforcement. A citation for code violation was issued in this matter on November 24, 2008 alleging that a garage is under construction without having obtained the required permits. At that time, it was also determined that the garage was being

constructed in the side yard rather than in the required rear yard; hence Petitioner filed the instant Petition for Variance.

It should be noted that the fact that a zoning violation has been issued is generally not relevant to this underlying zoning case. In short, this means that Petitioner cannot use the fact that a structure has been built or is in the process of being built to set a precedent in order to allow it to continue. Nor does the fact that a structure may be costly to remove or modify come into consideration of the zoning case. Conversely, the fact that something may have been done which could violate the Regulations is not held against Petitioner as some sort of an additional punishment. Zoning enforcement is conducted by the Department of Permits and Development Management, which has the authority to impose fines and other penalties for violation of law, whereas this Office considers only the discreet legal and factual issue of whether Petitioner is entitled to the requested zoning relief.

Testimony and evidence offered in the instant matter revealed that the subject property is a square-shaped property consisting of approximately 1.24 acres, more or less, zoned R.C.2. The property is located on the south side of Rockdale Road, west of the Prettyboy Reservoir and east of Gunpowder Road, in the Millers area of northwest Baltimore County. The property is improved with Petitioner's one-story brick single-family dwelling. A stone barbeque and a designated child's play area are located at the southeast corner of the property. Petitioner indicated that when he began construction of the garage, because of the location in the rural, "far reaches" of northwest Baltimore County, he was not aware that he needed a permit in such a remote area. He also indicated he was not aware of the location requirements that mandate the garage be located in the rear yard instead of the side yard until he was notified by the Code Enforcement Inspector.

In support of the variance request to locate the garage in the side yard, Petitioner indicated that the location of other improvements and certain site constraints on the property are what drive the need for the variance. Petitioner's existing driveway is somewhat unusual in that there is one entrance from Rockdale Road, which then splits so that part of the driveway proceeds across the front of the property, perhaps allowing easier access to the front entrance to the home. The other part of the driveway proceeds to the west side of the home and ends there, where the existing framed, but uncompleted garage is located. Petitioner indicated this is an ideal spot for the garage since this is where the driveway naturally ends. In addition, and as shown on the site plan, Petitioner indicated that the location of his septic reserve area and the lines running from the home to the septic, which is directly behind the garage and the dwelling, limits his ability to locate the garage in the rear yard as required. As to the 18 foot height, Petitioner indicated this is requested in order to keep the garage in harmony with the existing roofline and height of the dwelling. Photographs of the garage adjacent to the existing dwelling were marked and accepted into evidence collectively as Petitioner's Exhibit 2.

In further support of the variance requests, Petitioner submitted letters of support from nearby neighbors. These included David and Chrissy Stambaugh of 3803 Rockdale Road, Barry and Sandra Ditto of 3811 Rockdale Road, George and Missy Marshall of 3730 Rockdale Road, and Dave Serio and Michelle Hose of 3725 Rockdale Road. These letters were marked and accepted into evidence as Petitioner's Exhibits 3A through 3C. The Stambaugh's and the Ditto's live directly on either side of subject property and in particular, the Ditto's live on the same side as where the garage is located. In opposition to the requested relief, the undersigned received a letter dated February 13, 2009 from Jeffrey Smith of 3701 Rockdale Road, which was marked

and accepted into evidence as Protestant's Exhibit 1. Mr. Smith indicates a structure the size of Petitioner's garage is unsightly and that a smaller structure would not present an undue hardship.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated January 8, 2009, which recommends that the accessory structure not be converted into a dwelling unit or apartment, not contain any sleeping quarters, living area, kitchen or bathroom facilities, and not be used for commercial purposes.

Considering all the testimony and evidence presented, I am persuaded to grant the variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests. I find the configuration of the existing driveway, combined with the constraints posed by the location of the existing septic reserve area renders the property unique in a zoning sense. I further find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship in that Petitioner would not be able to erect an accessory structure otherwise permitted by the Regulations. I am also convinced that this variance can be granted in strict harmony with the spirit and intent of said regulations, and in such a manner as to meet the requirements of Section 307 of the B.C.Z.R, as established in *Cromwell v. Ward*, 102 Md.App. 691 (1995). It appears that the structure will be in character with the existing dwelling and will not overcrowd the land or have any detrimental impacts on the locale.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered, I find that Petitioner's variance request should be granted.

THEREFORE, IT IS ORDERED this 10<sup>th</sup> day of March, 2009 by this Deputy Zoning Commissioner, that Petitioners' Variance requests from Sections 400.1 and 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed accessory building (garage) in the side yard and with a height of 18 feet in lieu of the required in the rear yard and with a maximum allowed height of 15 feet be and are hereby GRANTED, subject to the following:

1. Petitioners are advised that they may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. The Petitioner or subsequent owners shall not convert the subject accessory structure into a dwelling unit or apartment. The structure shall not contain any sleeping quarters, living area, kitchen or bathroom facilities.
3. The accessory structure shall not be used for commercial purposes.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

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SIGNED  
THOMAS H. BOSTWICK  
Deputy Zoning Commissioner  
for Baltimore County

THB:pz