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| IN RE: PETITION FOR ADMIN. VARIANCE | * | BEFORE THE |
| NW/Side of Bonaparte Avenue, 330' S/W of | | |
| Carrington Drive | * | ZONING COMMISSIONER |
| (11614 Bonaparte Avenue) | | |
| 11 th Election District | * | OF |
| 5 th Council District | | |
| | * | BALTIMORE COUNTY |
| Russell O. Beard, IV, et ux | | |
| Petitioners | * | Case No. 2009-0172-A |

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Administrative Variance filed by the owners of the subject property, Russell O. Beard, and his wife, Tina M. Beard. The Petitioners seek relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed dwelling addition with a side yard (northeast side) setback of 3 feet and a sum of side yard setbacks of 28 feet in lieu of the minimum required 15 feet and 40 feet, respectively. The subject property and relief sought are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioners' Exhibit 1.

This case was originally filed as an administrative variance, pursuant to Section 32-3-303 of the Baltimore County Code. That Section allows an individual to seek variance relief for an owner-occupied residential property without a formal hearing, provided certain conditions are met. First, the property is duly posted and advertised giving public notice of the requested relief. Under the Code, any property owner residing within 1,000 feet of the property in question can request a public hearing within 15 days of the sign posting, if that person objects to the relief requested. If no hearing is requested, the matter can be considered and an Order issued by the Zoning Commissioner/Deputy Zoning Commissioner, based on the documentation contained in the file.

In the instant case, the property was duly posted and within the requisite time period, nearby property owners, Brian and Joann Brooks, filed a request for public hearing. The matter was therefore scheduled for a public hearing, which was held on February 9, 2009.

Appearing at the hearing in support of the request were Russell and Tina Beard, property owners. Appearing as Protestants in the matter were Brian Brooks and JoAnn Brooks, husband and wife, residing at 11616 Bonaparte Avenue, and Kenneth D. Hahn, who resides across from the subject property at 11613 Bonaparte Avenue.

Testimony and evidence offered revealed that the subject property is a rectangularly shaped parcel, located on the northwest side of Bonaparte Avenue, just south of that road's intersection with Carrington Drive in White Marsh. The property is also known as Lot 18 of the subdivision known as Darryl Gardens, and contains an area of 0.461 acres (20,300 square feet), more or less, zoned D.R.2. Presently, the site is improved with a two-story single-family dwelling, which features a full-length front porch and attached two-car garage. Photographs of the property were submitted and described by Mrs. Beard. She explained that a 12'-5" x 29' addition is desired and proposed to be located on the northeast side of the existing garage, adjacent to the Brooks' property. She described the site constraints associated with her property, including the location of a buried propane tank in the rear yard. In sum, both Tina and Russell Beard opined that the proposed location for the addition was the most appropriate, and that relief should be granted to allow a reduced setback in order to proceed. Petitioners' Exhibit 3 (floor plans) and Exhibit 4 (photo projecting the appearance of the contemplated improvements including the second story addition over the garage) demonstrate that the added space would provide for two (2) additional bedrooms, a bathroom, an eating area (no kitchen) and storage space. Mrs. Beard indicated that it would be "very difficult" and expensive to remove the buried propane tank and place the proposed addition in the rear yard and yet be architecturally compatible with existing conditions. She also indicated that it would be very difficult, from a practical standpoint, to construct the addition to other parts of the house, i.e, she would be

required to remove current fixtures and functional rooms if they build straight out from the rear of the home which would be costly and create a rather unpleasing appearance.

The Beard's have owned the property and resided thereon for nine (9) years. Tina Beard stated that her father has been diagnosed with cancer and her mother has severe arthritis. They both need care and assistance on a daily basis and she desires to have them come live with them. To provide for an independent living arrangement, the Beard's eventually settled upon the proposed plans for the project and opined that additional living area was needed within the house.

Testimony was then received from Mr. and Mrs. Brooks and Mr. Hahn. These witnesses each offered their own individual testimony, but the clear tenor and theme of their remarks was that the Petitioners' proposed addition would have a negative effect on their property value, privacy, and change the look and character of the neighborhood – for the worst. Additionally, the Brooks', whose bay window comes within 18 feet of the proposed side wall of the addition, point out that this is not the type of structure that screening with landscaping could hide.

The D.R.2 regulations require a minimum side yard setback for homes in Darryl Gardens of 15 feet (and a sum of side yards of 40 feet). None of the other nine (9) homes on Bonaparte Avenue encroach into the side setbacks. The aerial photographs submitted as Petitioners' Exhibit 5 and Protestants' Exhibit 3) note that many of the lots are the same in this community and that there is no uniqueness to the subject property that would warrant variance relief.

As stated at the conclusion of the hearing, this is a difficult case. From a practical standpoint, I am appreciative of the reasons the Beard's desire to expand their home. On the other hand, the Brooks' and Hahn's have expended sufficient sums to safeguard their privacy and insure significant buffers around their homes. This position is shared by other homeowners on Bonaparte Avenue (*See* Protestants Exhibit 2).

In considering the variance request, I am mindful of the requirements of Section 307 of the B.C.Z.R., as construed by *Cromwell v. Ward*, 102 Md. App. 691 (1995), which is the leading appellate case in considering the variance statute in Baltimore County. *Cromwell v. Ward* essentially requires a three-part examination of the variance request. First, the Petitioner must demonstrate that the property at issue is unique. Second, it must be shown that the uniqueness of the property results in a practical difficulty upon the Petitioner, if strict compliance with the regulations is required. Third, the Petitioner must demonstrate that the variance, if granted, would not be detrimental to adjacent properties.

Upon due consideration of the testimony and evidence presented in the instant case, I am not persuaded that the Petitioners have met this burden. Indeed, *Cromwell* requires that there must be a unique characteristic of the property at issue (i.e., topography, shape, configuration, etc.), in order for relief to be granted. The characteristics of the subject site are not unique when compared to other lots in the neighborhood. Moreover, I am not persuaded by the testimony presented by the Petitioners that the location for the proposed addition is the only functionally appropriate site. Although I understand and appreciate the testimony offered by the Petitioners about the benefits of economically locating the needed living space at the proposed location versus expenditures of large sums of money to place it elsewhere, I am not persuaded by the argument. I do not find the land unique, as required by *Cromwell* and, moreover, find no justification relating to the design of the house which would satisfy this prong. See also *Montgomery County v. Rotwein* 169 Md. App. 716 (2006) involving a similar case where a rear yard pool complicated the location of desired improvements.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 12th day of February 2009 that the Petition for Variance seeking relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side yard setback

of 3 feet in lieu of the required 15 feet for a proposed addition, in accordance with Petitioners' Exhibit 1, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petitioners shall have thirty (30) days from the date of this Order to file an appeal of this decision.

WJW:dlw

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