

IN RE: <b>PETITION FOR VARIANCE</b>	*	BEFORE THE
S/S Hanwell Road, 400' W of		
Brie Court	*	ZONING COMMISSIONER
<b>(4220 Hanwell Road)</b>		
2 <sup>nd</sup> Election District	*	OF
4 <sup>th</sup> Council District		
	*	BALTIMORE COUNTY
Kevin James Richardson	*	
<i>Petitioner</i>	*	<b>Case No. 2009-0290-A</b>

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### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the legal owner of the property, Kevin J. Richardson. Petitioner requests variance relief from Section 1B02.3.B [Section 1B01.2.C.1 - 1970 Zoning Regulations] of the Baltimore County Zoning Regulations (B.C.Z.R.) and Section V.B.3.b – 1970 Comprehensive Manual of Development Policy (CMDP) to permit a building-to-building separation (between detached dwellings on different lots) of 14 feet in lieu of the minimum required 16 feet, and to amend the Final Development Plan (FDP) for Woods of Winands, Lot 35, to allow the side and rear of the dwelling to be located outside of the building envelope as shown on the FDP. The property and requested relief are more particularly described on the two-page 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 was Kevin J. Richardson, property owner. Appearing as a Protestant in this matter was the adjacent neighbor at 4218 Hanwell Road, Ollinger N. Connolly.

Testimony and evidence offered disclosed that the subject property is a triangular shaped parcel located on the south side of a cul-de-sac at the end of Hanwell Road in Randallstown. The property recognized as Lot 35 – Section II, in the subdivision known as the Woods of

Winands contains a gross area of 8,291 square feet, or 0.1903 acres, more or less, zoned D.R.3.5. The property is improved with a two-story, split-foyer, single-family dwelling built in 1987. At issue in this case is an attached garage constructed by the Petitioner on the southeast side of his home<sup>1</sup> measuring 12' x 35' in size. This addition built by a licensed contractor will allow the parking of one vehicle and provide additional needed storage space.

By way of background, after purchasing the property in May 1987, the Petitioner decided late in 2008 that he would construct a garage. In this regard, Mr. Richardson hired a contractor and questioned him whether there was a need for a property survey or for him (Richardson) to do anything in particular. As illustrated on Petitioner's photographic Exhibit 2, he desired to have his improvements look like the other homes across the street with their attached garages (4219 and 4221 Hanwell Road). The contractor assured him that everything would be fine and began construction. Little did the Petitioner realize, at that time, that the proposed garage would become complicated by Section 1B01.2.C.1 of the B.C.Z.R. which requires a 16 foot separation distance between existing buildings.

The Petitioner's nightmare began in April 2009 when the Department of Permits and Development Management (DPDM), the agency that issued him a Building Permit (B712597), received an inquiry questioning the structure's setback distance from the Connolly's two-story home and garage built in 1987. Code Enforcement Officer Bob Peters visited the site on April 1, 2009 and issued a "Correction Notice" informing Petitioner that he would need to bring the property in conformance with the zoning regulations. In any event, the work was finished at this time and the Petitioner had paid substantial sums of money. He asserts that the separation between buildings is 14 feet while Mr. Connolly, testified that he too measured the distance and

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<sup>1</sup> A garage is a reasonable accessory use to a residence. *See Belvoir Farms v. North*, 355 Md. 259 (1999) and *White v. North*, 356 Md. 31 (1999).

found it to be 13 feet. The Petitioner now comes before me seeking relief as set forth above to allow the existing structure with a separation of 14 feet (at the time of the hearing no survey had been completed). Mr. Richardson testified at length as the practical difficulty and unreasonable hardship he has endured since receiving the correction notice, which has left him in an untenable position. Despite discussions with Mr. Connolly who has been trying to sell his house over the past year, little has been done to appease the Connolly's who actually believe that the garage is at or over the common property line.

Mr. Richardson testified that he placed the garage in its present location for the reasons indicated above and was not aware of any County restriction that would prevent him from doing so. As indicated, he submitted photographs depicting a number of similarly constructed garages in the immediate area. To a certain extent, I am sympathetic to Mr. Richardson's plight. A search of the Zoning Commissioner's records fails to disclose any variances applied for or granted for similar relief in this area. If other garages in the Woods of Winands subdivision have been erected over time, they have done so in disregard of the zoning regulations. 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, and topography. 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 exists as to the Petitioner's property, 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 31<sup>st</sup> day of July 2009 that the Petition for Variance seeking relief from Section 1B02.3.B [Section 1B01.2.C.1 - 1970 Zoning Regulations] of the Baltimore County Zoning Regulations (B.C.Z.R.) and Section V.B.3.b – 1970 Comprehensive Manual of Development Policy (CMDP) to permit a building-to-building separation (between detached dwellings on different lots) of 14 feet in lieu of the minimum required 16 feet, and to amend the Final Development Plan (FDP) for Woods of Winands, Lot 35, to allow the side and rear of the dwelling to be located outside of the building envelope as shown on the FDP, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED; and

IT IS FURTHER ORDERED that the Petitioner shall have one hundred twenty (120) days from the date of this Order to bring the garage in compliance with the zoning regulations.

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