

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
N side of Michaelsford Road, 629 feet		
NE of Katesford Road	*	DEPUTY ZONING
8 th Election District		
2 nd Councilmanic District	*	COMMISSIONER
(12310 Michaelsford Road)		
	*	FOR BALTIMORE COUNTY
Steven and Julie Burleson		
<i>Petitioners</i>	*	Case No. 2009-0308-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Administrative Variance filed by the legal owners of the subject property, Steven and Julie Burleson. The Variance request is from Section 1A04.3.B.3 (1979) of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed side yard setback for a garage addition of 24 feet in lieu of the required 50 feet, and to amend the previously approved plan and Order in Case No. 1989-0035-A, and to amend the Final Development Plan for Lot 10, Section 1 of Laurelford. The subject property and requested relief are more particularly described on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

This matter was originally filed as an Administrative Variance, with a closing date of June 22, 2009. On June 17, 2009, a nearby property owner, W. Carl Hossfeld of 12311 Michaelsford Road, filed a Formal Demand for Hearing. The hearing was subsequently scheduled for Monday, July 13, 2009 at 9:00 AM in Room 104 of the Jefferson Building, 105 West Chesapeake Avenue in Towson, Maryland. In addition, a sign was posted at the property on June 29, 2009 and an advertisement was published in *The Jeffersonian* newspaper, giving neighbors and interested citizens notice of the hearing.

Appearing at the public hearing in support of the requested relief was Petitioner Steven Burleson. Also appearing in support of the requested relief was Petitioners' architectural engineer, Thomas C. Kozlowski, with Bernoulli-Wright, LLC. In addition to the Formal Demand for Hearing, the case garnered interest from several neighbors also opposed to the relief. Appearing as Protestants were Carl and Susan Hossfeld of 12311 Michaelsford Road, Virginia Wich of 12999 Jerome Jay Drive, Carol Kakel of 12006 Boxer Hill Road, and Mark and Nancy Hyland of 15 Laurelford Court.

Testimony and evidence offered revealed that the subject property is a rectangular-shaped property consisting of approximately 1.09 acres, more or less, zoned R.C.5. The property is located on the northwest side of Michaelsford Road, north of West Padonia Road, in the Cockeysville area of Baltimore County. The property is situated in the Laurelford subdivision and is improved with Petitioners' two-story single-family dwelling with attached three car garage. The property is also improved with an in-ground pool located in the rear yard and is surrounded by what appears to be a black metal wrought iron fence running along the property line.

Petitioners acquired the property in 2007 and at this juncture desire to construct a garage addition to the west side of the existing dwelling. In order to do so, Petitioners are in need of variance relief to permit a side yard setback of 24 feet in lieu of the required 50 feet. It should be noted that this property was the subject of a previous zoning case. In 1988, the Developer of the property, Marble Hill Partnership, requested variance relief to permit a side yard setback on the east side of the property of 35 feet in lieu of the required 50 feet. Apparently, the Developer could comply with the 50 foot side yard setback on the west side of the property, but was in need of variance relief for the east side of the property in order to construct a home of adequate size

and style to be compatible with other recently constructed homes in the neighborhood. In an Order dated September 1, 1988, then-Zoning Commissioner J. Robert Haines granted the variance request. A few years later, in 1990, the subject home was built with the 35 foot side yard setback on the east side and the required 50 foot side yard setback on the west side of the property. Thereafter, a basement and first floor addition was added to the rear of the property. Following Petitioners' purchase of the property in 2007, they added the aforementioned in-ground pool to the rear of the property. The side yard setback on the west side of the property is now the subject of the instant variance requests for the two-story garage addition.

In support of the variance requests, Petitioner indicated that his primary need for the garage addition is that his four children are of driving age and he desires to keep all of the family's vehicles in a garage, under cover and in a secure place. Petitioner indicated that recently, the neighborhood and surrounding areas have been the targets of burglaries and thefts from vehicles, and added that his vehicle has been one of those that were broken into. The addition would also permit Petitioner to store outside items such as pool and lawn equipment inside when not in use. Photographs of the existing home were marked and accepted into evidence as Petitioners' Exhibits 4A through 4H. The photographs show an attractive, well kept home with an existing three car attached side loading garage. There is a single lane driveway leading to a large parking pad.

In further support of the variance requests, Petitioner's architectural engineer, Mr. Kozlowski, was offered and accepted as an expert in building design, building layout, and site design. Mr. Kozlowski indicated that Petitioners propose to construct the addition for a two-car garage and an unfinished storage area on the second floor. The garage level would also be reinforced to allow additional basement storage below. Mr. Kozlowski explained that he and

Petitioner first looked at a potential accessory structure as a detached garage, but they determined that the downward slope and grading of the property from the end of the driveway would be too steep to place in the required rear yard, and would also necessitate removing some mature trees. They were also constrained by the fact that an accessory structure could only be 15 feet in height and they wanted this new structure to blend in with the existing house, in terms of design similarity and height. Elevations of the proposed addition were marked and accepted into evidence as Petitioners' Exhibit 7. Mr. Kozlowski also pointed out that the lot is deeper than it is wide, and that the instant proposal meets their goals to preserve the existing grade and septic reserve areas.

Testifying in opposition to the requested relief were several interested neighbors. The first to testify was Carl Hossfeld who resides across the street at 12311 Michaelsford Road. Mr. Hossfeld indicated his primary objection is to Petitioners' plans for a front loading garage as part of the addition. The community has covenants against front loading garages and approving Petitioners' plans by allowing the request for variance would not be consistent with the other homes in the Laurelford community. Of the 130 plus homes in the community, only one home has a front loading single car garage and that is a small accessory structure; none of the homes on Michaelsford Road have a front loading garage. He also related that this community is a well-established upscale area with high end homes valued in excess of \$1 million. He believes granting the requested variance would erode the established aesthetic patterns of the neighborhood and could very well lead to other deviations that would further detract from the appearance of the neighborhood.

As to the setback issue, Mr. Hossfeld presented an aerial photograph of the area that was marked and accepted into evidence as Protestants' Exhibit 1, which shows approximately 15

homes, including his home and the subject property. As shown in the photograph, he pointed out that the homes in the Laurelford subdivision are well separated, with just about every home easily meeting the 50 foot side yard setback requirements. On the other hand, Petitioners' dwelling on the subject property, especially on the side of the proposed addition, already appears visually to be close to the property next door, and would be even closer if the variance were granted.

Also testifying individually and as President of the Laurelford Improvement Association, Inc. was Mark Hyland of 15 Laurelford Court.¹ Mr. Hyland indicated that the Declaration of Easements and Restrictions for the Laurelford subdivision is found at Liber 7595 Page 582 of the Land Records of Baltimore County. He points out several sections that he believes is relevant to the instant matter: Section 3.2 obligates property owners to submit an application for additions or new structures to the Architectural Committee for approval; Section 4.12 indicates that all garages shall be side loading where possible; and Section 4.14 limits the size of structures such as a guest cottage or bathhouse to 1,200 square feet. He also reiterated Mr. Hossfeld's testimony in stressing the importance of the prohibition of side loading garages, and in maintaining the side yard setbacks. He is also dubious about Petitioners' argument of not wanting to take down mature trees as a justification for the variance request. He believes this is an argument of convenience given that Petitioners previously removed a number of mature trees for their in-ground pool.

Virginia Wich of 12999 Jerome Jay Drive testified and expressed concerns about the neighbor on the side of the proposed addition and how the addition will decrease the value of his property due to the decrease in distance between the properties, and also testified in favor of

¹ Mr. Hyland is listed on the 2009 Personal Property Return for the Laurelford Improvement Association, Inc. as its President. He is also the Resident Agent in the Articles of Incorporation.

maintaining the existing standards for the neighborhood. Finally, Susan Hossfeld introduced an email dated July 10, 2009 from Margaret Counselman, a neighbor in the Laurelsford community, which was marked and accepted into evidence as Protestants' Exhibit 2. In the email, Ms. Counselman also expresses her opposition to the variance request, citing the proposed front facing garage.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the record of this case. The comments indicate no recommendations concerning the requested relief.

In considering a variance request, I am required under Section 307.1 of the B.C.Z.R. to determine, under a two prong test, first whether special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request; that is, whether there are unique features or characteristics of the property that drive the need for the variance. If that threshold requirement is met, only then am I to determine the next prong of whether strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship to Petitioner. In this case, although Petitioner has presented some evidence of hardship in his desire to have additional storage space and to keep his and his children's vehicles under cover in a secure area, I have not heard sufficient evidence to meet the first prong -- the uniqueness standard. In short, in my view, there are no features to this property that render this property unique as compared with others in the community, nor are there special circumstances not created by Petitioner that drive the need for the variance relief. *See, Cromwell v. Ward*, 102 Md.App. 691, 651 A.2d 424 (1995).

In addition, as an aside, I am also persuaded by the Protestants' testimony and evidence that granting the variance would not be in strict harmony with the spirit and intent of the Zoning Regulations, and that it would negatively affect the aesthetics and character of the community.

Although the covenants or restrictions of the Laurelford community are not binding upon me in determining whether to grant the requested relief, they are certainly probative for evidencing the intent of the original Developer and the subsequent property owners as to the layout and appearance of the community. To that end, I find that the subject property does not lend itself to the size and location of the garage addition proposed by Petitioners. I am certainly understanding of Petitioners' desire to expand the space of their home, and they have legitimate reasons for wanting to do so. But the property itself is only slightly over one acre in size, with a 3,700 square foot two-story home with a three car garage; there is an existing basement and ground floor addition off the back of the home, an in-ground pool, and landscaping and fencing in the rear yard. At some point, the proposed improvements overcrowd the available land and space that is intended by the applicable 50 foot setback. The east side of the property was already granted a variance to permit 35 feet in lieu of the required 50 feet some 20 years ago when the home was originally built. Now, Petitioners are requesting to approximately cut in half the applicable 50 foot setback on the west side of the property. For the reasons stated above, I am not persuaded to do so.

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

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 27th day of July, 2009 that an Administrative Variance from Section 1A04.3.B.3 (1979) of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed side yard setback for a garage addition of 24 feet in lieu of the required 50 feet, and to amend the

previously approved plan and Order in Case No. 1989-0035-A, and to amend the Final Development Plan for Lot 10, Section 1 of Laurelford be and is hereby DENIED.

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

____SIGNED_____
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz