

IN RE: PETITION FOR ADMIN. VARIANCE

E side of Division Avenue; 196.4 feet S
of the c/l of Middle Avenue
8th Election District
3rd Councilmanic District
(1703 Division Avenue)

Linda Dauses and Dennis Szymaszak
Petitioners
Erwin J. and Deborah A. Pawlicki
Contract Purchasers

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY
*
* **Case No. 2010-0064-A**

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Administrative Variance filed by the legal owners of the subject property, Linda Dauses and Dennis Szymaszak, and the contract purchasers, Erwin and Deborah Pawlicki, for property located at 1703 Division Avenue. The Variance request is from Section 303.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed addition to have a front yard setback of 26 feet in lieu of the required front yard average of 53 feet. The subject property and requested relief are more particularly described on the site plan that was marked as Petitioners' Exhibit 1. The proposed addition includes a new two car attached side load garage.

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

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on September 1, 2009 and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented. The Petitioners filed the supporting affidavit as required by Section 32-3-303 of the Baltimore County Code. In their

affidavit, Petitioners indicate that in order to provide proper clearances from the existing front wall and to maintain a portion of the existing driveway the garage is proposed at the front of the property. Moreover, they state the size of the garage cannot be reduced because it needs to have a minimum of 20 feet interior clearance to contain two cars, and there is not sufficient space elsewhere on the property to locate an attached garage.

In considering a request for variance, I must do so in accordance with the mandate of the Maryland Court of Special Appeals in the case of *Cromwell v. Ward*, 102 Md.App. 691 (1995) and their interpretation of Section 307 of the B.C.Z.R. In that case, the Court interpreted the regulation to require that a two-prong test be met in order for variance relief to be granted. First, it must be shown that the property is unique in some manner and that this uniqueness drives the need for variance relief. Secondly, upon the determination that the property is unique, it must then be considered whether strict compliance with the regulation would cause a practical difficulty upon the property owner and be unnecessarily burdensome. In my judgment, based on the evidence presented by Petitioners, there is not sufficient evidence of unusual conditions or characteristics that are unique to this lot, and which drive the need for the variance. In short, there is not sufficient evidence to suggest that this property meets the uniqueness requirement. As such, having determined that no uniqueness exists as to the Petitioners' property, I must therefore deny the variance requested by the Petitioners. Moreover, in the instant matter, I am not persuaded that the size and shape of Petitioners' lot, in and of itself, makes it unique such that the zoning regulations disproportionately affect the subject property as compared to others in the zoning district.

Finally, I must also determine whether the request is within the spirit and intent of the zoning regulations and its impact, if any, on adjacent properties. Although I am certainly

understanding and empathetic with Petitioners in their desire to construct a garage, in my view, the configuration of the subject property and the orientation of the dwelling does not lend itself to the construction of a garage addition as proposed on the site plan. The requested setback of 26 feet is less than half of the necessary 53 foot average required by the B.C.Z.R. and would put this property substantially at odds with other existing structures nearby. Hence, the request is not within the spirit and intent of the Zoning Regulations. I cannot find that special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Thus, I am persuaded in this case to deny the variance.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be denied.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 2nd day of October, 2009 that a variance from Section 303.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed addition to have a front yard setback of 26 feet in lieu of the required front yard average of 53 feet 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