

**IN RE: PETITIONS FOR SPECIAL HEARING * BEFORE THE
AND VARIANCE**

W side of Old Harford Road; 12.5 feet S * DEPUTY ZONING
of the c/l of Sonn Lane * COMMISSIONER
9th Election District * FOR BALTIMORE COUNTY
6th Councilmanic District
(8412 Old Harford Road)

Merril E. and Adelina P. Plait *
Legal Owners **CASE NO. 2010-0108-SPHA**

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the legal owners of the subject property, Merril E. and Adelina P. Plait. The Special Hearing request was filed in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an existing accessory structure (garage) on a proposed lot without an existing principal structure. The Variance request is from Sections 1B02.3.C, 400.1 and 400.3 of the B.C.Z.R. to permit an existing accessory structure on a proposed lot with a height of 20 feet and to be located on the third of the lot closest to any street in lieu of the maximum permitted 15 feet and the third of the lot farthest removed from any street, and to permit a proposed dwelling on a lot with a side setback of 8 feet and rear setback of 16 feet in lieu of the permitted 10 feet and 30 feet, respectively. 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 requested Special Hearing and Variance relief was Petitioner Merril Plait. There were no Protestants or other interested persons in attendance.

Testimony and evidence presented revealed that the subject property is square-shaped and contains approximately 21,748 square feet or 0.50 acre, more or less, zoned D.R.5.5. As shown on the site plan and the zoning map that was marked and accepted into evidence as Petitioners' Exhibit 2, the property is located at the southwest corner of the intersection of Old Harford Road and Sonn Lane, just north of Kings Ridge Road and south of Putty Hill Avenue, in the Parkville area of Baltimore County. The property is currently improved with an existing two-story single-family dwelling consisting of approximately 1,840 square feet located at the southeast end of the property, fairly close to Old Harford Road. There is also a large one-story garage consisting of approximately 1,100 square feet located at the northwest corner of the property.

Further evidence revealed that Petitioners purchased the subject property in 2004. In 2005, not long after they purchased the property, Petitioners sought to subdivide the lot. They realized the other lots in the surrounding area were mostly about half the size of their lot and thought it would be appropriate to create two lots out of their property; however, this process was stopped because at that time, Baltimore County had imposed a sewer moratorium, which prevented further development in that area. Presently, the sewer moratorium has been lifted and Petitioners are once again pursuing the subdivision of their property. Petitioners' Minor Subdivision Plan from 2005 (which is essentially the same as the subdivision now being pursued by Petitioners) was marked and accepted into evidence as Petitioners' Exhibit 3. This plan shows a proposed lot line running east-west through the center of the property and would essentially cut the property in half, with proposed Lot 1A being the lot with the existing dwelling and proposed Lot 1B being the location of the existing garage.

In the event the proposed subdivision is approved, this would leave Lot 1A with approximately 10,580 square feet or 0.24 acre, more or less, and the existing dwelling would

remain. Lot 1B would contain approximately 11,168 square feet or 0.256 acre, more or less, and the existing garage would remain. As part of their proposal to subdivide the lot, Petitioners plan to eventually sell Lot 1A with the existing dwelling and keep Lot 1B for themselves, where they would build a new dwelling as generally depicted on the Minor Subdivision Plan, and keep the existing garage. By retaining the garage, Lot 1B would exist, at least temporarily until a dwelling is built, as a lot with an accessory structure without a principal structure thereon, hence the request for special hearing. In addition, due to the subdivision and planned improvements to proposed Lot 1B, Petitioners are in need of variance relief from the side and rear setback requirements for the proposed dwelling, and from the height and location requirements for the garage accessory structure.

In support of the requested relief, Petitioner Mr. Plait explained that the lot itself and the history of the improvements is rather unusual and ultimately contributes to the need for zoning relief. In particular, Petitioner indicated that the existing dwelling was built in 1941. As shown in the photographs that were collectively marked and accepted into evidence as Petitioners' Exhibit 4, the dwelling has a distinctive "older home" appearance with a steep roofline, a side covered porch area that is essentially built into the roofline of the home, several interconnected roof gables, a stone exterior, and a basement level garage. The existing garage accessory structure was added later -- in the early 1970's -- by a previous homeowner. It is rather large, measuring 25 feet wide by 44 feet deep. As shown on the site plan, what is also unusual is that the garage is situated on the property such that it faces the side street -- Sonn Lane. Also according to Petitioner, the rear area of the garage has a separate room that has what appear to be ovens inside. Apparently, the owners that built the garage also ran a bakery and used that room for part of their business. In addition, Petitioner pointed out that the property is situated on a

corner lot, which makes it very difficult to place an accessory structure on the third of the lot farthest from the road as required.

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 October 21, 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. In addition, the Office of Planning, Design Review Section comments 1 through 6 dated October 26, 2009 for the minor subdivision request known as the “Plait Property, #05-054-M,” shall be incorporated herein and made a part hereof.

Considering the testimony and evidence present, I am persuaded to grant the requested relief. As to the special hearing, in my judgment it is appropriate to grant the relief. This request is the result of the proposed minor subdivision, which is under review and close to being approved by Baltimore County. Once approved, the existing garage will not have a principal dwelling on the same lot, at least until Petitioners build their new home. In order to ensure that proposed Lot 1B is not left without a principal dwelling for an extended period, the special hearing relief granted herein shall be valid only for a period of two years from the date of minor subdivision approval. In other words, if Petitioners do not follow through with their plans to construct a new home on Lot 1B within two years of the date of approval of the minor subdivision, then the relief shall become null and void and Petitioners or subsequent owners shall be required to file a subsequent special hearing request to permit an existing accessory structure on a lot without an existing principal dwelling.

As to the variance requests, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests. The property is

unique in that it is much larger than most of the other properties nearby. Other than the property next door to the south, most of the other properties in the area appear to be about 0.25 acre in size, which is about half the size of the subject property. It is also interesting that the dwelling was built in 1941 and the garage, which also has a similar stone exterior, was built over 30 years later, plus as the site plan shows, the placement of these improvements on the property could not be more different. Moreover, to a great extent, the need for variance relief in this matter is driven by the desire to legitimize existing conditions on the property, such as the 20 foot height of the garage and its location in the third of the lot closest to a street. Finally, the property is located on a corner lot, with frontage on Sonn Lane and Old Harford Road. Hence, I find the property to be unique in a zoning sense.

I also conclude that given the aforementioned constraints, Petitioners would suffer practical difficulty and undue hardship if the variance requests were to be denied. Petitioners have available density on their property and appear to be proposing a minor subdivision of the property that would be in keeping with the size and shape of other properties in the area. The main impediment to this plan and the reason for the instant zoning relief seems to be the lapse in time from when the dwelling and the garage were built and the unusual placement of the garage on the property. Finally, I find that the variance requests can be granted in strict harmony with the spirit and intent of the Zoning Regulations, and in such a manner as to grant relief without injury to the public health, safety and general welfare. Thus, I find that the variance can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R., as interpreted in *Cromwell v. Ward*, 102 Md.App. 691 (1995).

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and after considering the testimony and evidence offered, I find that Petitioners' Special Hearing and Variance requests should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 7th day of January, 2010 that Petitioner's request for Special Hearing relief filed in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing accessory structure (garage) on a proposed lot without an existing principal structure be and is hereby **GRANTED**; and

IT IS FURTHER ORDERED that Petitioners' request for Variance from Sections 1B02.3.C, 400.1 and 400.3 of the B.C.Z.R. to permit an existing accessory structure on a proposed lot with a height of 20 feet and to be located on the third of the lot closest to any street in lieu of the maximum permitted 15 feet and the third of the lot farthest removed from any street, and to permit a proposed dwelling on a lot with a side setback of 8 feet and rear setback of 16 feet in lieu of the permitted 10 feet and 30 feet, respectively, be and are hereby **GRANTED**.

The relief granted herein is subject to the following:

1. Petitioners may apply for their 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. In the event Petitioners do not follow through with their plans to construct a new home on proposed Lot 1B within two years of the date of approval of the minor subdivision, then the special hearing relief granted herein shall become null and void and Petitioners or subsequent owners shall be required to file a subsequent special hearing request to permit an existing accessory structure on a lot without an existing principal dwelling.
3. Petitioners 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.

4. The accessory structure shall not be used for commercial purposes.
5. Petitioners shall comply with the Office of Planning, Development Review Section comments dated October 26, 2009 concerning the requested minor subdivision entitled "Plait Property, #05-054-M" as follows:
 - a. Provide written verification that all Baltimore County zoning and building codes can be met when proposing a dwelling situated immediately adjacent to an existing structure. Indicate if the existing and proposed structures are to be attached.
 - b. Include the zoning Order for the above-referenced case on the Minor Subdivision Plan (the plan).
 - c. Note on the plan the use of the existing structure.
 - d. Show the orientation of all adjacent dwellings.
 - e. Provide confirmation from the Office of Zoning Review that the proposed dwelling meets the requirements of Section 303.1 of the B.C.Z.R.
 - f. Show a driveway for Lot 1B.

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