

IN RE: PETITION FOR ADMIN. VARIANCE
NW side of Morgan Elis Way, at the SW side
of Trumps Mill Road
Election District
Councilmanic District
(101 Morgan Elis Way)

Anthony E. and Brenda A. Difabbio
Petitioners

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY
* **Case No. 2010-0111-A**

* * * * *

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, Anthony E. and Brenda A. Difabbio for property located at 101 Morgan Elis Way. The variance request is from Section 1B01.2.C.1.a of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows:

- To permit a proposed addition (attached garage) with a side building face to public street right-of-way setback of 3 feet in lieu of the minimum required 15 feet; and
- To permit a front building face to public street right-of-way setback of 14 feet in lieu of the minimum required 25 feet; and
- To amend the Final Development Plan for Trumps Mill Estates, Lot 29 only.

The subject property and requested relief are more particularly described on Petitioners' Exhibit No. 1. Petitioners wish to construct a two-story garage addition measuring approximately 22 feet x 26 feet in size. Petitioners are in need of additional storage space in the loft area of the garage. Access to the proposed garage will be from the side street which is Trumps Mill Road. The front of the garage will be in line with the front of the existing dwelling. A stormwater management reservation is located behind the Petitioners' property.

Petitioners were previously granted Administrative Variance approval in Case No. 05-496-A to permit an accessory structure (garage) to be located in the 1/3 rear yard closest to the road

and with a height of 20 feet in lieu of the required 1/3 rear yard farthest removed from the road and the required 15 feet height, respectively. For whatever reason, the proposed garage was not constructed. There is a second and smaller vinyl shed in the backyard.

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

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on October 11, 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 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.

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.

I believe the proposed structure and the attendant size will overcrowd the land and will have an adverse impact on the overall appearance and character of the neighborhood, especially vis-à-vis other properties 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 4th day of November, 2009 that Variance from Section 1B01.2.C.1.a of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows:

- To permit a proposed addition (attached garage) with a side building face to public street right-of-way setback of 3 feet in lieu of the minimum required 15 feet; and
- To permit a front building face to public street right-of-way setback of 14 feet in lieu of the minimum required 25 feet; and
- To amend the Final Development Plan for Trumps Mill Estates, Lot 29 only be and are 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