

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
N/Side of Gateswood Road, 168' W of		
C/line of Knollton Road	*	ZONING COMMISSIONER
(222 Gateswood Road)		
	*	OF
8 th Election District		
3 rd Council District	*	BALTIMORE COUNTY
Nicklas Brandt, et ux	*	Case No. 2010-0143-A
Petitioners		

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Administrative Variance filed by the owners of the subject property, Nicklas Brandt, and his wife, Nicole Brandt. The Petitioners request a variance from Section 1B02.3.A.1 (March 30, 1955) of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an addition with a side yard setback of 7 feet (west side) and to permit an existing dwelling with a side yard setback of 13 feet (east side) in lieu of the required 15 feet, respectively.¹ The subject property and requested relief are more particularly described on the amended site plan which was accepted into evidence and marked as Petitioners' Exhibit 1A.

The Petition was originally filed as an administrative variance, pursuant to Section 32-3-303 of the Baltimore County Code. That Section allows an individual to seek variance relief for an owner-occupied residential property without a formal public hearing provided certain conditions are met. First, the property is posted and advertised giving public notice of the requested relief. Under the Code, any property owner residing within 1,000 feet of the property may request a public hearing for a determination as to the merits of the request. Additionally,

¹ Petitioners amended their petition and site plan at the onset of the hearing, without objection, to show a requested (west side) setback of 7 feet (rather than the 5 feet as originally filed). Since this decreased the relief that was being requested, they were permitted to proceed. It is also to be noted that Dulaney Forest is a residential subdivision approved by the Baltimore County Planning Board in 1955 and therefore entitled to the development standards and zoning regulations in effect at that time.

the Zoning Commissioner/Deputy Zoning Commissioner can schedule the matter for a public hearing if deemed appropriate. In this case, the Petitioners have filed the supporting affidavits as required by Section 32-3-303 (a)(2)(i) of the Baltimore County Code.

On November 13, 2009, Philip C. Hack, 220 Gateswood Road, filed a formal demand for public hearing. Additionally, the Dulaney Forest Community Association provided this Commission with a letter raising concerns of the project's potential impact on the community. The hearing was, therefore, subsequently scheduled for Monday, December 21, 2009, at 11:00 AM in Room 104 of the Jefferson Building, located at 105 West Chesapeake Avenue, Towson, MD.

Appearing at the requisite public hearing in support of the request were Niklas and Nicole Brandt, property owners. Appearing as Protestants were Philip C. and Janice K. Hack as well as William R. Levasseur, Esquire, in his capacity as Chairperson of the Dulaney Forest Community Association's Protective Covenants Committee.

Testimony disclosed the subject property is a rectangular-shaped lot with improvements built in 1956 oriented to front on the north side of Gateswood Road, just west of that roads intersection with Pot Springs Road in Timonium. The property is also known as Lot 9 of the Dulaney Forest subdivision, and contains an area of 0.62 acres, more or less (28,806 square feet), zoned D.R.2. Presently, the site is improved with a two-story split level-style dwelling, which features mature trees, a sloping rear yard with retaining walls and accessory structures (shed and playhouse). Photographs of the property were submitted and described by Mr. Brandt. He explained that a 26' wide x 32' deep attached garage addition is desired and proposed to be located on the front western side of the existing dwelling, adjacent to the Hack property. Mr. Brandt described the site constraints associated with the property, including the existence of a

substantial retaining wall due to the topography, large trees, playhouse and shed that prevent placement of the garage in the rear yard. In sum, the Brandt's opined that the proposed location for the addition was the most appropriate, and that relief should be granted to allow a reduced setback in order to proceed. The addition as contemplated will be one-story high and add 832 square feet to the home and provide parking and additional storage space. Architectural drawings prepared by Lloyd B. Martin, Jr. were received as Petitioner's Exhibit 3. Mr. and Mrs. Brandt indicated that it would be very difficult, from a functional standpoint, to construct the addition to other parts of the house. The Brandt's point out that the 13 foot side yard setback on the eastern side of the lot that they included on the Petition is to legitimize the house location on the lot which has existed without change for over 53 years. Evidently, the home was inadvertently built two (2) feet closer to the eastern property line than permitted as determined by Advanced Surveys in June 2009. (*See* Petitioners' Exhibit 1A).²

Testimony was received from Philip and Janice Hack who have lived in their home for over twenty (20) years. They purchased Lot 8 in Dulaney Forest as it is a half acre, wooded lot with the home (theirs and the Petitioners) set back further than mandated by Section 1B02.3.C.1 that requires a front yard depth of 40 feet. Their home is 62 feet from the right-of-way line of Gateswood Road; the Brandt's home is 88 feet. They asked for a public hearing to the side yard variance stating, if granted and the proposed structure built, it would be easily visible and

² I believe it analogous to refer to Section 5-114, of the *Courts and Judicial Proceedings Article*, Annotated Code of Maryland, Setback Line Restrictions. Specifically, Section 5-114(b)(3) provides:

... notwithstanding any other provision of State or local law to the contrary, a building permit that was otherwise validly issued, except that the permit wrongfully permitted the building or structure to violate a setback line restriction, shall be considered a valid building permit.

Sections 5-114(b)(1) and (2) prevent either a person or a governmental entity from initiating an action or proceeding arising out of a failure of a building or structure to comply with a setback line restriction more than 3 years after the date on which the violation first occurred if the building or structure was constructed or reconstructed.

become a dominant structure that would set an undesirable precedent to the detriment of the community. Mr. Hack testified that his property has similar topography constraints and he placed his garage in the rear yard. Without a doubt, he stated that having a garage attached to the front of the house would change the look and character of the neighborhood – for the worst. Additionally, it is not the type of structure that screening with landscaping could hide. *See* Protestants Exhibit 1 - photographic simulations (PhotoShop). Mr. Levasseur stated that the community association is also opposed to the granting of a variance. The association is comprised of 136 lots, most all are half acre lots with a 30-foot separation between homes. He stated the association will not approve the placement of a garage in front of the house.

As mentioned at the conclusion of the hearing, this is a difficult case. From a practical standpoint, I am appreciative of Mr. and Mrs. Brandt's desire to expand their home. It was indicated that they have no basement and that additional space is needed. On the other hand, Mr. and Mrs. Hack have expended sufficient sums to safeguard their privacy and believe the proposed garage 7 feet from their property would impact in a negative way upon their property value. This position is shared by the Dulaney Forest Community Association.

Any proposed construction in the front yard mandates close scrutiny. The impact of building in this area will be greater than the same proposal in the rear. Weighing all the testimony and evidence on this issue, I am persuaded to agree with Mr. and Mrs. Hack that granting a side yard variance would adversely impact the neighborhood. Communities simply look nicer if the view from the street is the grandest, prettiest part of the house – the formal front entry to the home. Aesthetics demand that the “front” should be the most attractive side. The proposed garage addition placed squarely in front of the house would destroy 50 years of efforts undertaken by this community in the enforcement of their covenants which promote and

maintain the standards for the changes to property setbacks. *See*, also B.C.Z.R. Section 260 – Residential Performance Standards - which state in pertinent part: “. . . garages may not become the dominant street feature . . . ”.

In considering the variance request, I am mindful of the requirements of Section 307 of the B.C.Z.R., as construed by *Cromwell v. Ward*, 102 Md. App. 691 (1995), which is the leading appellate case in considering the variance statute in Baltimore County. *Cromwell v. Ward* essentially requires a three-part examination of the variance request. First, the Petitioner must demonstrate that the property at issue is unique. Second, it must be shown that the uniqueness of the property results in a practical difficulty upon the Petitioner, if strict compliance with the regulations is required. Third, the Petitioner must demonstrate that the variance, if granted, would not be detrimental to adjacent properties.

Upon due consideration of the testimony and evidence presented in the instant case, I am not persuaded that the Petitioners have met their burden. Mr. Hack’s cross-examination of Mr. Brandt was particularly compelling that the subject property is not unique. Indeed, *Cromwell* requires that there must be a unique characteristic of the property at issue (i.e., topography, shape, configuration, etc.) in order for relief to be granted. The characteristics of the subject site are not unique when compared to other lots in the neighborhood. Moreover, I am not persuaded by the testimony presented by the Petitioners that the location for the proposed addition is the only functionally appropriate site. Without delving into matters of architectural taste or style, the Brandt’s contemporary home with the rear yard retaining wall is somewhat different from other residences in the community. It seems, however, that this configuration and location of the other improvements was done by Mr. Brandt and his predecessor in title. Although I understand and appreciate the testimony offered by the Petitioners about the benefits of economically locating

the needed garage at the proposed location versus expenditures of large sums of money to place it elsewhere, I am not persuaded by the argument. I do not find the land unique, as required by *Cromwell* and, moreover, find no justification relating to the design of the house which would satisfy this prong. See also *Montgomery County vs. Rotwein* 169 Md. App. 716 (2006) involving a similar case where a rear yard pool complicated the location of desired improvements.

Pursuant to the advertisement, posting of the property, public hearing on this Petition held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 14th day of January 2010, that the Petition for Administrative Variance seeking relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an addition with a side yard setback of 7 feet (west side), in accordance with Petitioners' Exhibit 1, be and is hereby DENIED; and

IT IS FURTHER ORDERED that the portion of the Petition for Variance to approve a side yard setback of 13 feet (east side) in lieu of the required 15 feet, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petitioners shall have thirty (30) days from the date of this Order to file an appeal of this decision.

WJW:dlw

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
of Baltimore County