

IN RE: PETITION FOR ADMIN. VARIANCE

N side of Raven Drive; 123 feet W of
the c/l of Heron Drive
13th Election District
1st Councilmanic District
(1110 Raven Road)

Donald L. and Anna M. Kimmell
Petitioners

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY
* **Case No. 2010-0237-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, Donald and Anna Kimmell for property located at 1110 Raven Road. The variance request is from Sections 1B02.3.B (1953-1955 B.C.Z.R.) of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an addition (garage) with a side yard setback of 4 feet and sum of side yards of 16 feet in lieu of the minimum permitted 7 feet and 17 feet, respectively. The subject property and requested relief are more particularly described on Petitioners’ Exhibit No. 1.

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 March 26, 2010 which states that the requested variance is questionable. The Petitioners’ plat does not show the rear addition that has been added to the original dwelling. The size of the existing dwelling is much larger than shown on the plat. The existing dwelling appears to be much larger than most of the other dwellings located in this neighborhood. Also, the Petitioners’ plat does not show the adjacent dwelling at 5818 Heron Drive. The impact of the proposed addition on the adjacent lot and dwelling (5818 Heron Drive) is a concern. The adjacent lot is located downhill from the Petitioners’ property. There is a sharp drop in the elevation of the land at the side property line. It

is not clear whether or not the proposed addition will create a drainage problem on the adjacent lot. The proposed 4 foot setback appears to be inadequate for this property and the adjacent lot, and it appears to be inconsistent with the pattern of side yard setbacks and separation of dwellings in the neighborhood. Comments were received from the Bureau of Development Plans Review dated March 24, 2010 which states that the proposed garage shall be located a minimum of 6 feet away from the property line. Permanent structures may not be built in drainage and utility easements. Alternatively, the Petitioners may request that the County release the easement. Doing that will delay this project three to six months and the Petitioners must pay the County the fair market value of the release easement.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on March 21, 2010 and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

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. Second, 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. In my view, the configuration of the subject property and the orientation of the dwelling does not lend itself to the construction of an addition as proposed. The Petitioners' property is similar in size to that of neighboring properties and the existing dwelling is also similarly situated on the property as that of the neighboring dwellings. The subject property is unremarkable when compared to other properties in the general vicinity.

A check of the Maryland Department of Assessments and Taxation Real Property Data Search shows that the adjacent properties in the area range in size from 8,855 square feet to 10,224 square feet with dwellings contained thereon ranging in size from 1,344 square feet to 1,932 square feet. The Petitioners' subject lot contains 9,959 square feet and the existing dwelling contains 2,404 square feet. Petitioners' existing dwelling is already substantially larger in size than any adjacent dwelling. An aerial photograph confirms that the subject dwelling is indeed the largest home in the neighborhood. In reviewing the photographs submitted with the Petition, it

appears that the dwelling had at one time a garage that was converted to additional living space. The rear of the dwelling also contains addition(s) that were not depicted on the site plan.

Upon due consideration of the evidence presented in the instant case, I am not persuaded that the Petitioners have met this burden. 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.

Additionally, the County has a drainage and utility easement along the side property line where the garage is proposed. According to the Bureau of Development Plans Review, neither the garage nor its foundation can be constructed within the easement. The garage would have to be 6 feet away from the property line. This easement would reduce the width of the proposed garage.

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. The proposed garage has the possibility of to negatively impact the property located at 5818 Heron Drive. Hence, in my judgment, the request is not within the spirit and intent of the Zoning Regulations. Further, 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 16th day of April, 2010 that a variance from Sections 1B02.3.B (1953-1955 B.C.Z.R.) of the Baltimore County Zoning Regulations (B.C.Z.R.) 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