

IN RE: PETITION FOR ADMIN. VARIANCE
N side of Carroll Manor Road, 380 feet N of
the c/l of Alliston Drive
10th Election District
3rd Councilmanic District
(4818 Carroll Manor Road)

Craig S. and Gina Marie Vacovsky
Petitioners

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY
* **Case No. 2010-0342-A**

* * * * *

AMENDED 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, Craig S. and Gina Marie Vacovsky for property located at 4818 Carroll Manor Road. The variance request is from Section 400.3 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an accessory structure (garage) with a height of 24 feet in lieu of the required 15 feet. The subject property and requested relief are more particularly described on Petitioners’ Exhibit No. 1. Petitioners declare that they purchased the home from the estate of Mrs. Vacovsky’s father. The home is where Mrs. Vacovsky was raised and they wish to do the same with their daughters. Their intention is to move their legal residence to the subject property once the proposed renovations and additions are complete. Currently they reside seven miles from the property in Harford County.

As shown on the site plan, Petitioners are proposing to add a family room to the front of the dwelling and a master bedroom to the north side of the home. The home is currently 1,662 square feet and the two additions will increase the living area to 2,900 square feet. Petitioners looked at options to include these spaces in a garage not requiring a height variance, but that option put them at odds with the requirement that a garage footprint be smaller than that of the

principal dwelling. The second floor of the garage will be used as a craft and sewing room for Mrs. Vacovsky. Mr. Vacovsky will use a portion of the second floor garage for storage of parts and equipment related to his hobby of classic car restoration. Another portion of the second floor garage space will be used as a home gym.

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 June 21, 2010, 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.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on June 20, 2010 and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

The Petitioners have filed the supporting affidavits as required by Section 32-3-303 of the Baltimore County Code. Based upon the information available, there is no evidence in the file to indicate that the requested variance would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Deputy Zoning Commissioner, the information, photographs, and affidavits submitted provide sufficient facts that comply with the requirements of Section 307.1 of the B.C.Z.R. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioners. Maintaining an accessory structure is a permitted use and failure to grant the variance would deprive them of a reasonable use of their property. *See, Belvoire Farms v. North* 355 Md. 259 (1999). Petitioners propose to construct a substantially sized accessory structure to be located in the rear yard at the east side of the property. The site plan shows an

accessory structure containing a two-story six car garage in the Craftsman style and containing 2,295 square feet. I find that the property is unique in size and shape, contains 11.78 acres zoned RC 2, is served by private well and septic, and is substantially larger than the other properties in the area.

I am, however, concerned about the size and proposed uses of the accessory structure, and the future possibility that the second floor of the garage might be utilized as a living area and, hence, constitute a separate dwelling on the property. Indeed, peoples' needs and desires in terms of future uses for their property often change or evolve over time, and sometimes those needs and desires change from one property owner to another. The Zoning Commissioner or Deputy Zoning Commissioner is empowered to impose restrictions upon the granting of any relief pursuant to Section 32-2-301(c) of the Baltimore County Code in order to meet the spirit and intent of the Zoning Regulations and for the protection of the surrounding and neighboring properties. In light of my concerns and the potential for abuse in the future, a number of restrictions are appropriate here and are enumerated below.

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 granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 31st day of August, 2010 that a Variance from Section 400.3 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit an accessory structure (garage) with a height of 24 feet in lieu of the required 15 feet is hereby GRANTED, subject to the following which are conditions precedent to the granting of the relief:

1. The Petitioners may apply for their building permit 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, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Architectural elevations of the two-story garage accessory structure shall be submitted to the Office of Planning for review and approval prior to the issuance of any building permit.
3. The two-story garage accessory structure shall not be used for any commercial purposes.
4. The Petitioners or subsequent owners shall not convert the subject two-story garage accessory structure into a dwelling unit or apartment. The structure shall not contain any sleeping quarters, living area, or kitchen and be limited to only a utility sink and/or half bathroom (sink and toilet) on the first floor.
5. It is expressly agreed and understood by Petitioners that the subject two-story garage accessory structure shall indeed be built and utilized as an accessory building or structure as that term is defined in Section 101 of the B.C.Z.R. The accessory structure shown on Petitioners' Exhibit 1 site plan shall be limited to uses incident and subordinate to the residential use of the property and the existing single-family dwelling thereon.
6. When applying for a building permit, the site plan filed must reference this case and set forth and address the conditions and restrictions of this Order.
7. To assure the current and future use of the subject property, Petitioners will, within sixty (60) days of the date hereof, record in the Land Records of Baltimore County a Covenant to the Deed for their property (in the form attached) expressly conditioning the use of the property. To assure compliance with this condition, a copy of the fully executed and recorded Covenant to the Deed shall be submitted to the Office of the Zoning Commissioner within thirty (30) days following the expiration of the sixty (60) day recording requirement. Failure to do so shall render the relief granted herein null and void.
8. Said Covenant shall contain the proviso that the subject two-story garage accessory structure shown on Petitioners' Exhibit 1 site plan shall be limited to uses incident and subordinate to the residential use of the property and the existing single-family dwelling thereon, and shall not be converted to a dwelling unit or apartment, shall not contain any sleeping quarters, living area, or kitchen and be limited to only a utility sink and/or half bathroom (sink and toilet) on the first floor, and shall not be used for any commercial purposes.
9. The decision in this case is not a legal precedent that may be cited as such in any other zoning case involving a residential garage accessory structure.

10. Upon request and reasonable notice, the Petitioners shall permit a representative of the Baltimore County Division of Code Inspections and Enforcement to make periodic inspections of the subject property to ensure compliance with this Order.

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

Attachment

COVENANT TO THE DEED

Whereas, in a Petition for Administrative Variance before the Deputy Zoning Commissioner for Baltimore County, Case No. 2010-0342-A, Craig S. and Gina Marie Vacovsky, the Petitioners, requested an Administrative Variance to permit an accessory structure (garage) with a height of 24 feet in lieu of the required 15 feet. The Deputy Zoning Commissioner, by Order dated the 15th day of July, 2010, granted the Administrative Variance, providing the following Covenant be added to their Deed, which Deed was recorded in the Land Records of Baltimore County, at Liber _____, Folio _____.

Craig S. and Gina Marie Vacovsky, and subsequent owners, hereby covenant that the accessory structure shall not be converted into a dwelling unit or apartment, not contain any sleeping quarters, living area, or kitchen and be limited to only a utility sink and/or half bathroom (sink and toilet) on the first floor, and shall not be used for any commercial purposes. It is expressly agreed and understood by Petitioners that the subject two-story garage accessory structure shall indeed be built and utilized as an accessory building or structure as that term is defined in Section 101 of the Baltimore County Zoning Regulations. The accessory structure shown on Petitioners' Exhibit 1 site plan shall be limited to uses incident and subordinate to the residential use of the property and the existing single-family dwelling thereon. Said property is subject to all terms and conditions contained in the Order issued in Case No. 2010-0342-A.

As witness our hands and seals this _____ day of _____, 2010.

_____(SEAL)
Craig S. Vacovsky

_____(SEAL)
Gina Marie Vacovsky

State of Maryland)

To wit

County of Baltimore)

I HEREBY CERTIFY THAT ON THIS _____ day of _____, 2010, before me a Notary Public of the State of Maryland, in and for Baltimore County, personally appeared Craig S. and Gina Marie Vacovsky, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument, and acknowledge that they executed the same for the purposes therein contained, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and Notarial Seal:

NOTARY PUBLIC

My Commission Expires: