

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
S side of Long Knoll Way, 1460 feet S of		
the c/l of Longfield Drive	*	DEPUTY ZONING
11 th Election District		
3 rd Councilmanic District	*	COMMISSIONER
(21 Longknoll Way)		
	*	FOR BALTIMORE COUNTY
Alexander and Jessica Hafer		
<i>Petitioners</i>	*	Case No. 2010-0351-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Administrative Variance filed by Alexander and Jessica Hafer, the legal property owners, for property located at 21 Longknoll Way. The Variance request is from Sections 400.1 and 400.3 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed detached accessory structure (garage) to be located in the side yard of the dwelling with a height of 35 feet in lieu of the required rear yard and maximum allowed 15 feet, and to amend the Final Development Plan of Longfield Estates, Lot 22 only. The subject property and requested relief are more particularly described on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

This matter was originally filed as an Administrative Variance, with a closing date of July 12, 2010. On July 12, 2010, John Mulcahy, residing at 20 Longknoll Way, filed a Formal Demand for Hearing. The hearing was subsequently scheduled for Wednesday, August 11, 2010 at 11:00 AM in Room 104 of the Jefferson Building, 105 West Chesapeake Avenue, Towson, Maryland. In addition, a sign was posted at the property on July 27, 2010 and an advertisement was timely published in *The Jeffersonian* newspaper, giving neighbors and interested citizens notice of the hearing.

Appearing at the public hearing in support of the requested relief was Petitioner Jessica Hafer. Also appearing in support of the requested relief was Wayne Huller with Remodel Max, Petitioners' builder. Although nearby neighbor John Mulcahy filed the formal demand for hearing, Mr. Mulcahy did not appear, nor were there any Protestants or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is irregular-shaped and consists of approximately 2.46 acres, more or less, zoned R.C.5. As shown on the record plat that was marked and accepted into evidence as Petitioners' Exhibit 2 and recorded in 1991, the property is located at the southern terminus of Longknoll Way, west of Belair Road in the Longfield Estates subdivision, in the Kingsville area of Baltimore County. The property is improved with a two-story single family dwelling that is depicted in photographs that were marked and accepted into evidence as Petitioners' Exhibits 3A through 3C. According to tax records, the dwelling was constructed in 1998 and contains approximately 5,000 square feet, including an attached side loading three car garage. As indicated in the Affidavit that accompanied the Petition and in testimony at the hearing, Ms. Hafer explained that Petitioners desire to construct a detached garage accessory structure to provide additional storage that is needed for the family. As shown on the site plan, the proposed 28 foot by 28 foot two-story detached garage would be front loading and be located at the end of the existing parking pad, diagonal to the existing attached garage.

In support of the requested variance relief, Ms. Hafer and Mr. Huller indicated that the extreme unusual shape of the property as well as the topography are features that drive the need for variance relief. As shown in the photographs of the property that were marked and accepted into evidence as Petitioners' Exhibits 4A through 4Q, the slope of the property drops off

significantly from its frontage on Longknoll Way toward the rear of the property. In fact, the slope is so pronounced that Petitioners have had to specially landscape the front yard with rows of shrubs and rocks to function as a type of rip-rap in order to keep the front yard intact. The photographs also show significant slopes leading down to the rear of the property. The existence and location of the septic reserve area in the rear of the property also limits placement options of the detached garage in the required rear yard. In addition, Ms. Hafer stated that the proposed location of the garage also makes the most logistical sense, since it would be located on the same side of the home as the existing garage and would provide a natural end and drive-in point from the existing parking pad. Mr. Huller also indicated that, in addition to fulfilling Petitioners' storage needs, the requested garage height of 35 feet is necessary in order to give the structure a consistent appearance with the roof height and lines of the existing home. The goal is to have the new garage fit in aesthetically with the existing home and, as shown on the elevation drawings that were marked and accepted into evidence as Petitioners' Exhibit 5, the proposed architectural design of the garage and materials will do just that.

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 29, 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 garage should be compatible with the architecture and materials of the existing dwelling. Submit building elevations to the Office of Planning for review and approval prior to the application for building permit.

After considering the testimony and evidence presented, I am persuaded to grant the request for variance relief. There is certainly adequate visual evidence that the subject property

is peculiar, unusual and unique in accordance with Section 307.1 of the B.C.Z.R. Factors such as the subject property's location at the terminus of a court, its exaggerated anomalous shape, as well as the significantly steep slopes, serve as special circumstances or conditions that combine to render the property unique in a zoning sense. Further, I find that strict compliance with the Zoning Regulations would create a hardship that would result in a denial of a reasonable and beneficial use of the property. *See, Belvoir Farms v. North* 355 Md. 259 (1999). Moreover, I find no evidence that granting the variance relief would adversely impact the surrounding community. Accordingly, I also find this variance request 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.

I am, however, concerned about the size and particularly the height 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 set forth as conditions to the granting of the variance relief.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by Petitioners, I find that Petitioners' Variance request should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 2nd day of September, 2010, that the Administrative Variance request from Sections 400.1 and 400.3 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a proposed detached accessory structure (garage) to be located in the side yard of the dwelling with a height of 35 feet in lieu of the required rear yard and maximum allowed 15 feet, and to amend the Final Development Plan of Longfield Estates, Lot 22 only, be and are hereby **GRANTED**, subject to the following which are conditions precedent to the relief granted herein:

1. 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, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. The detached garage accessory structure shall be compatible with the architecture and materials of the existing dwelling. Petitioners shall submit building elevations to the Office of Planning for review and approval prior to the application for building permit.
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. 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 and Exhibit 5 elevation drawings 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 and Exhibit 5 elevations drawings 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, kitchen or bathroom facilities, 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

THB:pz

COVENANT TO THE DEED

Whereas, in a Petition for Administrative Variance before the Deputy Zoning Commissioner for Baltimore County, Case No. 2010-0351-A, Alexander and Jessica Hafer, the Petitioners, requested an Administrative Variance to permit a detached accessory structure (garage) to be located in the side yard of the dwelling with a height of 35 feet in lieu of the required rear yard and maximum allowed 15 feet. The Deputy Zoning Commissioner, by Order dated the 2nd day of September, 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 _____.

Alexander and Jessica Hafer, 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, kitchen or bathroom facilities, and 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 and Exhibit 5 elevation drawings 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. 2010-0351-A.

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

_____(SEAL)
Alexander Hafer

_____(SEAL)
Jessica Hafer

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 Alexander and Jessica Hafer, 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: