

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
S side of Gunpowder Road; 620 feet N		
of Jerome Avenue	*	DEPUTY ZONING
11 th Election District		
5 th Councilmanic District	*	COMMISSIONER
(5658 Gunpowder Road)		
	*	FOR BALTIMORE COUNTY
Michael McCarty		
<i>Petitioner</i>	*	Case No. 2011-0044-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 owner of the subject property, Michael McCarty for property located at 5658 Gunpowder Road. The variance request is from Sections 400.1 and 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an accessory structure to be located in the front yard in lieu of the required rear yard, and an attached garage to be located within 3 feet of the side property line in lieu of the required 15 feet. The subject property and requested relief are more particularly described on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

On September 1, 2010, the Undersigned called for a formal hearing on this matter based on the negative Zoning Advisory Committee (ZAC) comments from the Office of Planning. The hearing was subsequently scheduled for Monday, November 15, 2010 at 9:00 AM in Room 104 of the Jefferson Building, 105 West Chesapeake Avenue, Towson, Maryland. In addition, a sign was posted at the property and an advertisement was published in *The Jeffersonian* newspaper, giving neighbors and interested citizens notice of the hearing.

Appearing at the public hearing in support of the variance request was Petitioner Michael McCarty. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence received in the case revealed that the subject property is square-shaped and contains approximately 0.42 acre, more or less, zoned D.R.2. The property is located on the south side of Gunpowder Road, approximately 620 feet north of Jerome Avenue, in the White Marsh area of Baltimore County. The property is presently improved with a single-family dwelling consisting of 1,137 square feet and a shed measuring 10 feet by 17 feet. According to tax records, the home was built in 1960 and Petitioner acquired the property in 2010 and has lived there for about six months. Petitioner owns a 35 foot long recreational vehicle (RV) that he wishes to store under cover. Petitioner also wants to build an attached garage that would enable him to store his vehicle as well as other household and lawn items. If the garage is permitted, Petitioner indicated he would remove the existing shed located in the rear yard that is not in very good condition. The reason he needs to put these structures in the side (garage) and front (RV port) is because of the topography and terrain of his property. Petitioner's property slopes from right to left and toward a stream located behind his property.

Petitioner states in the Affidavit that accompanied the variance Petition that the proposed location for the garage alleviates two drainage concerns that would be created by placing the garage behind the house. Due to the grade and elevation of the driveway there would be a long downward slope along the side of the house to the garage door. This would create water accumulation in front of and inside the garage. The building would also be subjected to the drainage from the property adjacent to the Petitioner's. The shed that is presently located behind the house has water in it whenever it rains. As stated above, this shed will be removed when the garage is built. By moving the garage up the grade and beside the house, both of these issues are resolved and the current drainage will not be disturbed. Petitioner also stated in the Affidavit that the proposed position of the RV port addresses the same concerns.

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 August 16, 2010 which indicates that they do not support an accessory structure (proposed RV port) in the front yard. There are no other instances wherein a large carport is present in the front yard in the neighborhood. As such, a precedent should not be set by allowing large carports in the neighborhood. However, the Planning Office would not object if the RV port were located behind the front façade at least 10 feet. The Planning Office does support additional relief for the proposed attached garage provided the Petitioner submits architectural elevations to them for review and approval.

Considering all the testimony and evidence presented, I am persuaded to grant the variance relief as to the proposed attached garage. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. I find the property to be unique based on the topography of the property and drainage issues. Additionally, a property owner has a common law right to use his property in a manner so as to realize its highest and best use. *See Aspen Hill Venture v. Montgomery County Council* 265 Md. 303 (1972). A garage is a reasonable accessory use to a residence. As to the variance for the RV port, I agree with the Planning Office that this structure is permissible so long as it is placed at least 10 feet behind the rear façade of the dwelling. Therefore, the Petition and the relief granted shall be amended as follows: to request variance relief from Section 400.1 of the B.C.Z.R. to permit an accessory structure (RV port) to be located in the side yard at least 10 behind the front façade of the dwelling in lieu of the required rear yard.

I further find that Petitioner would suffer practical difficulty and undue hardship if the variance requests were to be denied. Petitioner would not be able to construct a garage to protect

his vehicles and store personal belongings. Likewise, Petitioner would be unable to protect his RV investment without a cover to shield it from the elements. Finally, I find that the variances can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. Photographs submitted with the Petition (Petitioner's Exhibits 3A and 3B) clearly show that the perimeter of the property is heavily wooded.

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 variances should be granted with conditions.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 16th day of November, 2010 that a Variance from Sections 400.1 and 1B02.3.C.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit an accessory structure (RV port) to be located in the side yard at least 10 behind the front façade of the dwelling in lieu of the required rear yard (as redlined on the attached site plan), and an attached garage to be located within 3 feet of the side property line in lieu of the required 15 feet, be and are hereby **GRANTED**, subject to the following:

1. Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his 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 Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Architectural elevations for the proposed garage shall be submitted to the Office of Planning for review and approval prior to the issuance of any building permit.
3. At such time as Petitioner decides to construct the RV port accessory structure, it shall be constructed of materials similar and complementary to that of the dwelling.
4. The RV port shall be located at least 10 behind the front façade of the dwelling.

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