

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
SE corner of Betty Bush Lane and	*	ZONING
Bellona Avenue		
(6 Betty Bush Lane)	*	COMMISSIONER
9 th Election District		
3 rd Councilmanic District	*	OF BALTIMORE COUNTY
Mathew F. and Dulany R. Dent	*	
<i>Legal Owners</i>		CASE NO. 2011-0148-SPHA

* * * * *

MEMORANDUM OPINION

This matter comes before this Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the legal owners of the subject property, Mathew F. and Dulany R. Dent. The Dents are owners of the property located at 6 Betty Bush Lane, which is located near the intersection of Charles Street and Bellona Avenue. Petitioners request a special hearing to construct a functional open breezeway 47 feet in length which would connect a proposed two story garage to their dwelling, as shown on the site plan. In addition, the Petitioners seek variance relief for the following:

From Sections 1B02.3.C.1, 301.1, 400.1, and 400.3 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows:

- To allow a front yard setback of 17 feet in lieu of the required 50 feet for an existing dwelling; and
- To allow a front yard setback of 11 feet in lieu of the required 37.5 feet for a proposed open patio; and
- To allow a garage in the front yard in lieu of the required rear yard (if necessary); and

- To allow a garage with a height of 25 feet more or less in lieu of the required maximum height of 15 feet (if necessary).

Appearing at the requisite public hearing in support of the requests were the owners, Mathew F. and Dulany R. Dent, and their property line surveyor, Bruce E. Doak of Gerhold, Cross & Etzel, Ltd. Also present at the hearing was Laura Thomas with Melville Thomas Architects, Inc., who prepared architectural drawings for the project and Delbert Adams, the Petitioners' contractor. Finally, Peggy Squitieri appeared on behalf of the Ruxton Riderwood Lake Roland Area Improvement Association, Inc. (RRLRAI). Several letters were received from neighboring homeowners, they are included in the zoning file. I have reviewed all these letters, and I think it is fair to say that they are evenly divided between those that are supportive of the project, and those offering opposition. The gist of the letters opposing the project essentially take issue with the size and scale of the proposed garage addition, which itself would be larger than the home of the neighbor closest to the Dents' property, Thomas Schweizer, who submitted a letter in opposition to the project.

The subject property is irregularly shaped, and Mr. Doak indicated it was shaped like a "pork chop". The subject property is approximately 1.3 acres and is zoned D.R. 1. The two story brick home at the subject property was constructed prior to 1955, and the current setback from the property line is 17 feet, while the current Zoning Regulations require a 50 foot setback for new construction. In addition, the Dents have proposed to construct an open patio on the west side of the existing two story dwelling, which would be located 11 feet from the property line, again instead of the 37.5 feet required under the B.C.Z.R. Section 301.1. The Petitioners seek variances for each of the aforementioned front yard setbacks.

Petitioners have also filed a request for special hearing, seeking approval to construct a functional open breezeway of up to 47 feet in length which would be attached to the existing two story dwelling. According to the site plan submitted with the special hearing request, the proposed covered breezeway would connect to the existing two story brick dwelling on the east side, and would continue and attach to the south side of the proposed three story garage. Assuming the special hearing relief were to be granted, Petitioners would not need to seek zoning relief for the proposed placement of the garage in the front yard of the dwelling, given that the garage would be connected to the principal residence by the proposed breezeway. Assuming the special hearing relief for the breezeway was denied, the Petitioners have sought (as an alternative remedy) variances to allow a garage in the front yard in lieu of the required rear yard pursuant to B.C.Z.R. Section 400.1, and a variance to allow a garage height of 25 feet in lieu of the 15 feet maximum height provided for under Section 400.3.

Photographs of the property were submitted, and were marked as Petitioners' Exhibits 2-A through 2-I, which depict the subject property from a number of vantage points. Petitioners explained that the proposed two story garage is situated in such a way so that the entrance, (i.e., the garage doors) is facing west, and would not be visible to those traveling down Betty Bush Lane (a private road) from Bellona Avenue.

Contained within the file is a letter dated December 7, 2010 from Scott Bass and Elyse Jacob, who reside at 7110 Bellona Avenue, which abuts the subject property on the northeast side. Mr. Bass and Ms. Jacob oppose the construction of the two story garage, mainly contending that it would alter the landscape and aesthetics of the neighborhood, and would be larger than the residence across the street at 14 Betty Bush Lane. An opposition letter dated December 8, 2010 was received from David and Sonya Hannan, who reside at 7108 Bellona Avenue, to the northeast

of the subject property. Mr. and Mrs. Hannan oppose the construction of the two story garage, and are concerned that it would be located in the front yard of the Dents' home, and would negatively impact the view and sight lines from their property.

Finally, the file contains a letter dated November 8, 2010 from Frances Schweitzer, who resides at 14 Betty Bush Lane and is the Dents' closest neighbor. Ms. Schweitzer also opposes the granting of this proposed variance, and is concerned that the size and location of the garage would negatively effect the park-like setting of the neighborhood.

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).

In the present case, the subject property is indeed unique, in that the "pork chop" configuration is somewhat unusual and does present challenges when considering improvements and enlargements on the premises. With respect to the variances pertaining to the existing dwelling and open patio front yard setbacks, such relief would not be detrimental to adjacent properties, and I am persuaded that they should therefore be granted.

That leaves for consideration the special hearing relief sought for the proposed open breezeway. The primary concern in connection with this request is that there is absolutely no reference in the Baltimore County Code or the Zoning Regulations pertaining to breezeways. Thus, the special hearing relief would have to be granted (or denied) without resort to any particular rule or regulation, or case law construing same.

Further complicating matters is that approval of the breezeway would then allow the Petitioners to construct a significant two story garage in their front yard, which raises serious concerns and would also be contrary to the generally applicable rule found in the Zoning Regulations which requires garages to be located in the rear of the primary residence. In light of

the above, I am not persuaded that the Petitioners are entitled to the relief sought in the Petition for Special Hearing, especially since the breezeway is not required for the use and enjoyment of the subject property, but would merely serve to legitimize the placement of the proposed garage in the front yard.

In light of this ruling, the next topic for consideration is whether the Petitioners are entitled to variance relief to allow a garage with a height of 25 feet more or less in the front yard of their home. Again, I am not persuaded that the Petitioners have met their burden to entitle them to variance relief. Primarily, and even recognizing that the subject site is somewhat unique in configuration, I do not believe that the front yard location for the proposed two story garage is the only functionally appropriate placement for the structure. Based on the site plan, the Petitioners could certainly construct a garage in the rear of the dwelling which would not require a variance or special hearing relief. Having made a site visit to the subject property, and taking into consideration the location of the nearest adjoining homeowners (all of whom are opposed to the project), I believe that the construction of the proposed garage would be of such a size and scale as to alter the open and pastoral setting on this private cul-de-sac. Simply put, though, the Petitioners may certainly desire to construct the garage in their front yard, this is not the only available location for the structure, and doing so would have a negative impact on the closest adjoining neighbors. In addition, the Petitioners have not introduced evidence sufficient to satisfy the rigorous test for variance relief set out in *Cromwell v. Ward*, and the Petitions must therefore be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County, this 13th day of December, 2010 that Petitioners' request for Variance seeking relief from the front

yard setbacks for an existing dwelling and proposed open patio, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Special Hearing to construct an open breezeway be and is hereby DENIED; and

IT IS FURTHER ORDERED that the Petition for Variance seeking alternative relief to construct a garage in the front yard of the home, and at a height of 25 feet, be and is hereby DENIED.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

___SIGNED___
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:pz