

<b>IN RE: PETITION FOR ADMIN. VARIANCE</b>	*	BEFORE THE
NW side of Park Drive, 60' SW of		
Fairfield Drive	*	OFFICE OF ADMINISTRATIVE
1 <sup>st</sup> Election District		
1 <sup>st</sup> Council District	*	HEARINGS FOR
<b>(8 Park Drive)</b>		
	*	BALTIMORE COUNTY
David B. and Karen A. Hescoc		
<i>Petitioners</i>	*	<b>CASE NO. 2012-0293-A</b>

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**ORDER AND OPINION**

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Administrative Variance filed by the legal owners of the property, David B. and Karen A. Hescoc. The Petitioners are requesting Variance relief from § 400.3 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed accessory building (garage) with a height of 19' in lieu of the maximum permitted 15'. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 4.

This matter was originally filed as an Administrative Variance, with a closing date of June 11, 2012. On June 15, 2012, Judge Lawrence M. Stahl requested a formal hearing on this matter after receiving a letter of objection. The hearing was subsequently scheduled for Tuesday, August 21, 2012 at 10:00 AM in Room 205 of the Jefferson Building, 105 West Chesapeake Avenue, Towson.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. There were no adverse comments submitted from any of the County reviewing agencies.

Appearing at the public hearing in support for this case was Petitioner David B. Hescoc and Joe Roedig (a neighbor). Also in attendance were Stephen E. and Beatrice G. Chevront who reside at 1205 Frederick Road, Catonsville, Maryland. Mr. and Mrs. Chevront opposed the variance petition.

Testimony and evidence revealed that the subject property is 12,320 square feet and is zoned DR 2. Petitioner testified he recently razed a dilapidated garage on his property, and would like to construct a new garage with dimensions of 20' x 22', as shown on the site plan (Exhibit 4). The Petitioners would like to construct the garage with a 19' height, which requires variance relief.

Based upon the testimony and evidence presented, I will grant the request for variance relief. Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People's Counsel*, 407 Md. 53, 80 (2008).

Petitioners have met this test.

The property is of irregular dimensions, as shown on the site plan, and this renders the site "unique" for zoning purposes. In addition, the Petitioners would experience a practical difficulty, in that they would be unable to construct the garage they have planned, as shown on the building sketches (Exhibit 5).

In making this determination, I did give serious consideration to the concerns articulated by Mr. and Mrs. Chevront. Mr. Chevront indicated his concerns were twofold: (1) he believed the garage with a 19' height would be at odds with the historic nature of the

neighborhood; and (2) that his view of wildlife/birds would be blocked by the garage. As an initial matter, the site plan – approved by the County Zoning Review Office – indicates that this structure is not “historic,” as that term is used in Baltimore County Code (B.C.C.) §§ 32-7-101 et seq. As such, this cannot serve as the basis for denying relief in this case.

The next concern raised by the Chevronts (whose property abuts the Petitioners’ to the rear, as shown on Protestants’ Exhibit 1) was that their view would be obstructed by the garage. As a factual matter, I am not convinced the additional 4' in height would materially alter the view presently enjoyed by the neighbors. But more importantly, as a legal matter, in the absence of a restrictive covenant a property owner has no right to an unobstructed view across a neighbor’s property. *See, e.g., In Re Riverview Develop.*, 986 A.2d 714 (NJ 2010). Therefore, this also cannot be the basis upon which to deny relief.

Although the Office of Planning did not make any recommendations related to the garage height and usage, I will impose conditions 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.

Pursuant to the advertisement, posting of the property, and public hearing on this petition, and after considering the testimony and evidence, I find that Petitioners’ variance request should be granted.

THEREFORE, IT IS ORDERED, this 22<sup>nd</sup> day of August, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance relief from § 400.3 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed accessory building (garage) with a height of 19' in lieu of the maximum permitted 15', be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. The Petitioners may apply for a building permit and may be granted same upon receipt of this Order. However, the Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the thirty (30) day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners will be required to return and be responsible for returning said property to its original condition.
2. The 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.
3. The accessory structure shall not be used for commercial purposes.

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

JEB:dlw

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Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County