

IN RE: PETITION FOR ADMIN. VARIANCE
NW side of Magnolia Avenue; 350 feet NW
of the c/l of Winans Avenue
13th Election District
1st Councilmanic District
(4628 Magnolia Avenue)

Brian J. and Kelly M. Mitchell
Petitioners

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY
* **Case No. 2010-0233-A**

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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, Brian J. and Kelly M. Mitchell for property located at 4628 Magnolia Avenue. The variance request is from Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed accessory structure (garage) with a height of 25 feet in lieu of the maximum permitted 15 feet. The subject property and requested relief are more particularly described on Petitioners' Exhibit No. 1. Petitioners desire to construct a detached garage to replace the current garage which was damaged by excessive snowfall in February, 2010. The additional garage height is to store personal belongings for the family of six. A portion of the garage will be used as a workshop for the Petitioner who is a carpenter. None of the adjacent property owners expressed concern about the requested variance.

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 April 5, 2010 which indicates that Petitioners' plat does not show the location of the existing dwelling located to the east of the proposed accessory structure. The proposed accessory structure is almost as large as the Petitioners' dwelling and it will be larger than many dwellings located in the County.

Placing this large of a building so close to three property lines is a concern. The minimal proposed side and rear setbacks are questionable for a large 25 foot high building. If approved, it should be made clear that the garage cannot be used for business or living purposes.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on March 14, 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. If the variance request were denied, the Petitioners would be unable to construct a new larger garage to replace the damaged garage. The existing single family home contains 1,409 square feet; therefore, the additional garage height is necessary to store belongings for the family of six. This property is irregular in shape with a front property line width of 60 feet and tapering to a rear property line of width approximately 30 feet. The proposed garage will be constructed at the rear of the property, with a large portion of the left side of garage next to existing dense tree cover. Railroad tracks are located on the other side of the trees. None of the neighbors in the immediate vicinity voiced any objection to the proposed garage. I am mindful of the concerns raised by the Planning Office, so I will impose conditions that the accessory structure (garage) 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 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 8th day of April, 2010 that a Variance from Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed accessory structure (garage) with a height of 25 feet in lieu of the maximum permitted 15 feet is hereby GRANTED, subject to the following:

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. 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 or kitchen 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.

____SIGNED_____
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz