

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
S/Side of Maple Avenue, 25' W of the c/l of		
Woodside Avenue	*	ZONING COMMISSIONER
(4501 Maple Avenue)		
13 th Election District	*	OF
1 st Council District	*	BALTIMORE COUNTY
Christopher Stone, et ux	*	
Petitioners		Case No. 2010-0339-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Administrative Variance filed by the owners of the subject property, Christopher Ian Stone and Deborah E. Atwood. The Petitioners request variance relief from Sections 1B02.3A.5, 1B02.3B and 1B02.3.C.1.a of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed addition with a 20-foot rear setback and a 2-foot setback to a side street right-of-way (Woodside Avenue) in lieu of the required 30-feet and 25-feet, respectively.¹ The subject property and requested relief are more particularly described on the amended site plan submitted which was accepted into evidence and marked as Petitioners' Exhibit 1.

The Petition was filed through the administrative variance process, pursuant to Section 32-3-303 of the Baltimore County Code. That Section allows an individual to seek variance relief for an owner-occupied residential property without the need for a public hearing. Under the Code, the property in question is posted for a period of 15 days during which time any property owner residing within 1,000 feet of the property may demand a public hearing for a determination as to the merits of the request. Additionally, the Zoning Commissioner/Deputy Zoning Commissioner can schedule the matter for a public hearing if deemed appropriate. In

¹ As will be explained in greater detail, the Petitioners revised their site plan at the public hearing to lessen the size of the requested addition. Since the revised petition involved the same regulations and decreased the relief that was being requested, the Petitioners were permitted to proceed.

this regard, Deputy Zoning Commissioner Thomas Bostwick, following his review of the case file, requested that a public hearing be held, and thus the matter was scheduled for a hearing before the undersigned on August 23, 2010.

Appearing at the hearing were Christopher Stone and Deborah Atwood, property owners, and Henry Berger, III, their architect/builder and consultant who assisted in the preparation of the site plan(s) and building elevations for this property and garage addition. There were no Protestants or other interested persons present. It should be noted, however, that confirmation was received from those nearby residents (five) who have visibility of the subject property and the proposed 16' breezeway and 24' x 32' garage addition. All support the proposal; namely, Brian and Jill Wyckoff (4503 Maple Avenue), Charles J. & Catherine L. Kososki (4505 Maple Avenue), Bennett C. Robley (4505 Maple Avenue), William I. & Tracey Heslop (4507 Maple Avenue), and Richard G. & Patricia A. Grace (1701 Woodside Avenue).

Testimony and evidence offered revealed the subject property is a rectangular-shaped corner lot (aka double frontage lot) with its improvements orientated to front on Maple Avenue and the home's eastern side parallel to Woodside Avenue in the subdivision of Halethorpe. The property contains a net area of 0.143 acres (6,250 square feet), more or less, zoned D.R.5.5 and is improved with a 1-½ story bungalow home built in 1920 and detached garage located in the southwest corner of the lot. The home is in good condition and very attractive. The garage is in poor condition. *See* photo exhibits collectively received as Petitioners' Exhibit 2. The Petitioners purchased the property in August 2007 and contracted to have the home redesigned and improved in keeping with the many distinctive older homes of the locale. As evidenced by photographs and building elevation drawings submitted, they decided to construct a 950 square foot (24' wide x 32' deep) garage attached to the rear of the home by a 16' breezeway with its garage access from Woodside Avenue. The addition was designed in keeping with the surrounding community and will match the existing dwelling. Additionally, the enclosed breezeway is an architectural amenity on the eastern façade and includes a side entranceway. The breezeway has been configured to preserve trees and a large mature Holly tree. *See*

elevation photograph – Petitioners’ Exhibit 4. The existing garage deck and asphalt driveway will be removed as illustrated on the amended site plan (Exhibit 1). However, in order to proceed as proposed the requested variances are necessary.

The current D.R.5.5 minimum setback requirements contained in B.C.Z.R. Section 1B02.3.B and C.1 mandate a minimum rear yard distance of 30 feet and corner street side setback of 25 feet from a building face. The Zoning Commissioner’s Policy Manual (ZCPM), Page 1 – 1.3(a) sets forth the method of measuring building setbacks. On double frontage lots, the corner side yard setback is measured by extending the foundation wall line to the nearest road or right-of-way. In this regard, it is undisputed that the Petitioners home is non-conforming. It was built prior to the adoption of the Zoning Regulations. This historical fact now results in a practical difficulty and undue hardship as the home, when built many years ago, now has an east foundation wall (corner side yard) setback 10 feet from the Woodside Avenue right-of-way that proceeds past the subject property before reaching Linden Avenue. Mr. Berger presented photographs and testimony of the site constraints and topography – the property slopes rather substantially from its high point along Woodside Avenue to its low point at the southwest corner. His plan will require building the garage’s eastern wall into the slope of the bank that will serve to reduce the appearance of mass and size of the addition. The eastern side wall will be as close as 2 feet from the County’s right-of-way line, however, there is an additional 13 feet of green space between the right-of-way line and the actual curb and paved road (Woodside Avenue) surface. He aptly points out that the Petitioners would be allowed to extend the existing structure’s non-conforming east wall by up to 25% pursuant to B.C.Z.R. Section 104.2.

The Zoning Advisory Committee (ZAC) comments were received and made part of the record of this case. Comments from the Office of Planning, dated July 1, 2010, raised a number of questions that were addressed by Petitioners. Briefly, Mr. Dennis Wertz, the Community Planner for the First Councilmanic District, attended the hearing and participated following his review of the amended site plan (Exhibit 1), elevation drawings (Exhibit 4) and floor plan (Exhibit 5). He was satisfied that the new addition’s footprint was reduced from 1,300

square feet to 950 square feet and the existing driveway paving that extends from the rear of the dwelling to the existing garage would be removed and that the addition would be architecturally consistent with the existing dwelling. After his review of the ZAC comment from the Bureau of Development Plans Review, dated June 17, 2010, he was satisfied that the variances were the minimum variances needed to afford relief.

Christopher Stone addressed the “Home Occupation” use that would be conducted entirely within the den space above the new garage addition. He is a Systems Engineer with Apple. The den-office will be used for his desk, some files related to his work and a few Apple owned pieces of demonstration equipment which will be used at customer locations. There will be no signage, customer visits at neither the subject property nor any traffic related to his office. It is solely for his use. I find this use appropriate and in accord with the intent of the B.C.Z.R.

After due consideration of the testimony and evidence presented, I am persuaded to grant the variances. I must consider the request in accordance with the mandate of *Cromwell v. Ward*, 102 Md. 691 (1995) and Section 307 of the B.C.Z.R. The Court interpreted the regulation to require that two tests be met in order for variance relief to be granted. First, it must be shown that the property is unique in some manner and that the uniqueness drives the need for variance relief. Secondly, upon the determination that the property is unique, then it must be considered whether compliance with the regulation would cause a substantial difficulty upon the property owner and be unnecessarily burdensome. In my judgment, there has been evidence of unusual conditions or circumstances that are unique to this corner lot, namely, the preservation of the property’s mature trees and the hilly site that slopes from side to side. It was demonstrated at the hearing that the largest Holly tree would need to be sacrificed if the placement of the addition was located directly to the rear yard next to the open porch. An area variance may be granted where strict application of the zoning regulations would cause practical difficulty or undue hardship to the Petitioner and his property. *McLean v. Soley*, 270 Md. 208 (1973). After due consideration of the testimony and evidence presented, I am convinced that practical difficulty or unreasonable hardship will result if the Variances are not granted. It has been established that

the addition is placed in the best location to add an attached garage where the grade would slope away from the structure to prevent water problems that destroyed the existing garage that will be razed. Special circumstances exist in this case and the relief requested will not cause any injury to the public health, safety or general welfare, and otherwise meets the spirit and intent of the Baltimore County Zoning Regulations. Thus, I am persuaded to grant the rear and side yard variances. The garage with its workspace above is a reasonable accessory use to the principle two-bedroom home built in 1920 that currently provides only 1,510 square feet of enclosed area.

Pursuant to the advertisement, posting of the property and public hearing on this petition held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 30th day of August 2010 that the Petition for Variance seeking relief from Sections 1B02.3A.5 and 1B02.3C.1(a) of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an addition (garage) with a 20-foot rear yard setback and a 2-foot setback to a side street right-of-way in lieu of the maximum required 30-feet and 25-feet respectively, in accordance with Petitioners' Exhibits 1, 4 and 5, be and is hereby GRANTED, subject to the following restriction:

1. The Petitioners may apply for any permits necessary but are hereby made aware that proceeding at this time is at their own risk until the thirty (30) day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

WJW:dlw

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