

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
S side of Williams Road; 1500 feet E		
of Long Green Pike	*	DEPUTY ZONING
11 th Election District		
3 rd Councilmanic District	*	COMMISSIONER
(5611 Williams Road)		
	*	FOR BALTIMORE COUNTY
James T. and L. Wanda Streett		
<i>Petitioners</i>	*	CASE NO. 2010-0148-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owners of the subject property, James and Wanda Streett. Petitioners are requesting Variance relief as follows:

- From Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure to be located in the side yard in lieu of the rear yard; and
- From Section 400.3 of the B.C.Z.R. to permit an accessory structure with a height of 26 feet in lieu of the maximum permitted 15 feet.

The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the variance requests was Petitioner James T. Streett. Also appearing in support of the requested relief was James Grammer, a Project Manager with McKee and Associates, Inc., the firm that prepared the site plan. There were no Protestants or other interested persons in attendance.

Testimony and evidence offered revealed that the subject property is irregular-shaped and contains approximately 8.074 acres, more or less, zoned R.C.2. The property is located on the south side of Williams Road, north of Glen Arm Road and just east of Long Green Pike, in the Hydes area of Baltimore County. The subject property is presently unimproved and was once part

of a larger tract consisting of approximately 10 acres that was the subject of a two lot minor subdivision that was approved in July 2009. Petitioners purchased the entire property in July 2008. At that time, the larger tract was improved with an existing 1½-story dwelling that was built in 1952 according to the property's tax records. As shown on the site plan, Petitioners subdivided the property in such a way that the subject property (now known as Lot 2) is much larger (approximately 8.074 acres) and virtually surrounds the smaller property (approximately 1.8 acres now known as Lot 1). The minor subdivision resulted in Lot 2 being the unimproved property and Lot 1 being improved with the single-family dwelling. Following approval of the minor subdivision, Petitioners sold Lot 1 to Robert and Cynthia Turner.

As depicted on the site plan and the Minor Subdivision Plan that was marked and accepted into evidence as Petitioners' Exhibit 2, at this juncture, Petitioners plan to construct a new single-family dwelling on the subject property, Lot 2, as well as a detached garage accessory structure. Because of the way Lot 2 is now configured and due to constraints on the property that will be discussed below, the garage accessory structure is to be located just to the west side of the proposed dwelling at approximately the same depth from Williams Road. This would put the garage accessory structure in the side yard rather than the required rear yard, thus necessitating the requested variance relief. Petitioners also desire a garage approximately 26 feet in height, which also requires variance relief from the permitted 15 foot height.

In support of the requested variance relief, Mr. Grammer, Petitioners' land use and zoning consultant, explained that the wooded nature and topography of the subject property severely limits the area of development. As shown on the topographical lines depicted on Petitioners' Exhibit 2, the property drops off significantly from Williams Road toward a stream that essentially bisects the property and runs in an east-west direction through the south-central area of the property. Moreover, as part of the minor subdivision approval, the Department of Environmental

Protection and Resource Management (“DEPRM”) required forest conservation easements and forest buffer easements that occupy approximately 6.3 acres of the 8 acre property. As a result, the available building area for the subject property is primarily in the northeast corner of the property. According to Mr. Grammer, these limitations, combined with the location of the septic reserve area and well, limits the location of accessory structure improvements such as Petitioners’ proposed garage. As shown on the site plan, although sizable in terms of acreage, the subject property has virtually no usable backyard area where permitted accessory structures could be located. Mr. Grammer also indicated that the proposed garage would tie in with the existing driveway for Lot 1 for access to the garage. As a result, the proposed garage would not have to connect to the proposed separate driveway access to Lot 2 located on the other side of the property, thus reducing the amount of impervious surface area on Lot 2.

As to the height of the garage accessory structure, Mr. Grammer explained that the proposed height is requested mainly to make the structure compatible with the proposed dwelling on the site. This compatibility is desired, as Williams Road is a designated Scenic Road in the Baltimore County Master Plan 2010. Elevation drawings of the proposed garage and the proposed dwelling were marked and accepted into evidence as Petitioners’ Exhibits 3 and 4, respectively. They show that both structures will have brick exteriors with multiple rooflines and gables for architectural interest, and steep rooflines with a 12 / 12 pitch. The garage will utilize the significant slope of the property in order to have a lower level basement in the rear and a ground floor level in the front and an upper loft level. The garage will be used to store Petitioners’ vehicles and equipment, including a snow plow and boat. Petitioner and Mr. Grammer acknowledged that the garage accessory structure would not be used as a second dwelling unit or apartment.

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 December 8, 2009 which recommends 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.

Considering all the testimony and evidence presented, I am persuaded to grant the variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. It is clear that Petitioners' options with regard to the location of an accessory structure are limited. The forest buffer and forest conservation easements and other constraints such as the steep slopes permit very few areas for additional improvements to the property. As such, I find the property unique in a zoning sense. I also find that the proposed height of the garage is supported by the elevation drawings that were accepted into evidence. Moreover, in my view, Petitioners would suffer practical difficulty and undue hardship if the variances were to be denied. Petitioners would be denied an accessory structure that is otherwise permitted by the Regulations. 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.

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

THEREFORE, IT IS ORDERED this 8th day of January, 2010 by this Deputy Zoning Commissioner that Petitioners' Variance requests as follows:

- From Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure to be located in the side yard in lieu of the rear yard; and

- From Section 400.3 of the B.C.Z.R. to permit an accessory structure with a height of 26 feet in lieu of the maximum permitted 15 feet,

be and are hereby **GRANTED**, subject to the following:

1. Petitioners are advised that they may apply for any required building permits 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, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioner or subsequent owners shall not convert the subject accessory structure into a dwelling unit or apartment, nor shall it be used for commercial purposes. The structure shall not contain any sleeping quarters, living area, kitchen or bathroom facilities.
3. It is expressly agreed and understood by Petitioners that the subject garage accessory structure shall indeed be built and utilized as an accessory building or structure as those terms are defined in Section 101 of the B.C.Z.R. The garage accessory structure, as shown on Petitioners' Exhibit 1 and the elevation drawings (Petitioners' Exhibit 3), shall be limited to uses accessory to the residential use of the property and the proposed single-family dwelling to be constructed thereon.
4. When applying for a building permit, the site plan filed must reference this case and set forth and address the conditions and restrictions of this Order.
5. Upon request and reasonable notice, Petitioners shall permit a representative of the Baltimore County Division of Code Inspections and Enforcement to make periodic inspections of the subject property to ensure compliance with this Order.

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