

IN RE: <b>PETITION FOR VARIANCE</b>	*	BEFORE THE
W/Side Rider Hill Road, 520' S of	*	ZONING COMMISSIONER
C/line of Berwick Road	*	OF
<b>(7700 Rider Hill Road)</b>	*	BALTIMORE COUNTY
9 <sup>th</sup> Election District	*	<b>Case No. 2010-0149-A</b>
3 <sup>rd</sup> Council District	*	
Lynn Miller Weiskittel Jaeger	*	
Petitioner		

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owner of the subject property, Lynn M. Weiskittel Jaeger. The Petitioner seeks relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a proposed two-story addition and garage in conjunction with an attached breezeway that will require a side yard setback of 5 feet in lieu of the requisite 15 feet and a rear yard setback of 21 feet in lieu of the required 40 feet.<sup>1</sup> The subject property and requested relief are more particularly described on the amended redlined site plan which was accepted into evidence and marked as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the request were Lynn M. Weiskittel Jaeger, Petitioner; her daughter, Sarah Weiskittel, and Bruce E. Doak, with Gerhold, Cross & Etzel, Ltd., the engineering firm that prepared the site plan. Appearing as concerned adjacent property owners were Margo and Tony McClellan and Peggy Squitieri, on behalf of the Ruxton-Riderwood-Lake Roland Improvement Association (RRLRIA).

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<sup>1</sup> The Petitioner amended her petition and site plan at the onset of the hearing, without objection, to show a (south side) setback of 5 feet and (rear yard) setback of 21 feet [rather than the 2 feet and 18 feet as originally filed]. Since this deceased the relief that was requested, she was permitted to proceed.

Mr. Doak testified and presented the plan. Testimony and evidence offered revealed that the subject property is an irregularly shaped rectangular parcel, located on the east side of Rider Hill Road that ends at the Petitioner's property in Ruxton. The property is also known as Lot 12 as shown on the Plat of Malvern and contains a gross area of 1.10 acres, more or less, zoned D.R.2. Presently, the site is improved with a two-story cottage-style dwelling built in 1933 featuring a sunroom, detached garage and well-established landscaped gardens. Photographs of the property were submitted and described by Ms. Jaeger. She explained that a 38' wide x 30' deep x 25' high garage/guest accommodation addition is desired and proposed to be located in an area on the southeast side of her dwelling, over top of the footprint of the existing deteriorating garage adjacent to the Mostwin and McClellan properties. Mr. Doak and Ms. Jaeger described the site constraints associated with this property, including the backwards orientation of the house on the lot – that when built in 1933 – was anticipated to front on a “30-foot avenue” as illustrated on the 1911 Plat of Malvern submitted as Petitioner's Exhibit 5. That “30-foot avenue”, however, was never built. In sum, Ms. Jaeger opined that the proposed location for the addition was the most appropriate and that the relief should be granted to allow a reduced setback (which has in essence has been occupied by the current garage for more than 77 years) in order to proceed. Ms. Jaeger had her architect, Frank Lucas, prepare architectural drawings and has discussed the improvements with her neighbors. *See* Petitioner's Exhibit 8. The addition as contemplated will add two (2) rooms, a bath and storage/office space over a three-car garage so that family members who come for weekend visits and holidays can gather comfortably. As more particularly shown on the elevations (Petitioner's Exhibits 7A and 13), the dormer and window treatment design would tend to visually reduce the size of the structure and soften its effect or appearance from the neighbors' perspective. Ms. Jaeger indicated that it would be very

difficult, from a functional standpoint, to construct the addition to other parts of the house, i.e., the topography slopes east to west, the shape of the lot forms a triangle at the southwest corner, the home's location at the end of the road complicated by its backwards orientation on the lot, etc. Mr. Doak opined that all these factors render 7700 Rider Hill Road unique, unusual and different from the surrounding properties. In support of this conclusion, I have had the benefit of a well-done and exhaustive Brief submitted by Ms. Jaeger as Petitioner's Exhibit 11.

Testimony was received from Margo McClelland. She and her husband have owned the adjacent 1.24-acre at 1204 Malvern Avenue since 1994. They constructed their home in 1996 and emphasized that she and her husband desire privacy and purchased the lot with mature trees to provide additional means of privacy. She stated if the variance request was granted, and the proposed structure built at a height of 25 feet, it would be easily visible by them when using their property. She testified they oriented their home where they did in reliance of existing neighboring structure locations and if a 25-foot high garage would have been on the Jaeger property, they would have positioned their home differently. Additionally, it is not the type of structure that additional screening and landscaping could hide. They relied on the zoning laws and regulations and the pattern of development as assurances that the character of the locale would be maintained thereby protecting their investment. The McClelland's felt that the variance, if granted, would benefit one owner to the detriment of others and submitted a letter of opposition from Jacek Mostwin, who has Power of Attorney for adjacent property owners, Danuta and Stanislaw Mostwin, as well as a letter from their realtor indicating the proposed addition at a height of 25 feet would diminish the market value of their (McClelland's) home. *See* Protestants Exhibits 1 and 2.

As stated at the conclusion of the hearing, this is a difficult case. From a practical standpoint, I am appreciative of Ms. Jaeger's desire to expand her home to accommodate family members who live out of state (New York, Pennsylvania, and Oregon). It was indicated that her house was a three (3) bedroom home and that additional space is needed. On the other hand, Mr. and Mrs. McClelland have expended sufficient sums to safeguard their privacy and assure a significant buffer around their home. The undersigned advised all parties that the record of the case would be held open for a period of two (2) weeks, to allow for further negotiations and hopefully a compromised agreement. Subsequently, by copy of an e-mail, dated December 30, 2009, Ms. Jaeger advised the undersigned that no "final" agreement had been reached and the garage location in the opinion of her architect, Frank Lucas, should remain as positioned on the amended site plan.

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) which is the leading appellate case considering the variance statute in Baltimore County. I am not persuaded that the Petitioner has met her burden. Moreover, I am not persuaded by the testimony presented by the Petitioner that the location for the proposed addition is the only functionally appropriate site. In my judgment, there are other options available for locating the proposed garage and guestrooms. All parties discussed the mature evergreen trees along the property boundaries that buffer views. Moving the structure further north and away from the southeast corner reduces its visualization from the neighbors most impacted. This conclusion can be of no comfort to Ms. Jaeger who has expended great time, effort and expense in attempting to use her property for what she believes to be a reasonable and significant use. In her Brief (Petitioner's Exhibit 11), Ms. Jaeger reasons why the land's configuration and location of existing improvements satisfies the legal test of

uniqueness to support the granting of an area variance as required by *Cromwell*. It is the position of this Commission, however, that a property owner is bound by the actions of his or her predecessor in title. *See, Salisbury Board of Zoning Appeals v. Bounds*, 240 Md. 547 (1965) which states at Page 554:

“The restrictions of the ordinance, taken in conjunction with the unique circumstances affecting the property must be the proximate cause of the hardship. If the peculiar circumstances which render the property incapable of being used in accordance with the restrictions contained in the ordinance have been themselves caused or created by the property owner or his predecessor in title, the essential basis of a variance, i.e., that the hardship be caused *solely* through the manor of operation of the ordinance upon the particular property, is lacking. In such case, a variance will not be granted; the hardship, arising as a result of the act of the owner or his predecessor will be regarded as having been self-created, barring relief”.

Although I understand and appreciate the testimony offered by the Petitioner about the benefits of economically locating the needed living space at the proposed location versus expenditures of large sums of money to place it elsewhere, I am not persuaded by the argument.

Pursuant to the advertisement, posting of the property, public hearing on this Petition held, and for the reasons set forth herein, the relief requested shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 19<sup>th</sup> day of January 2010, that the Petition for Variance seeking relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a proposed two-story addition and garage and an attached breezeway with a side yard setback of 5 feet in lieu of the required 15 feet and a rear yard setback of 21 feet in lieu of the required 40 feet, in accordance with Petitioner’s Exhibit 1, be and is hereby DENIED; and

IT IS FURTHER ORDERED, that upon Petitioner submitting a Motion for Reconsideration showing a two-story addition/garage with an attached breezeway and changing

