

IN RE: PETITION FOR VARIANCE
SE side of Circle Road and W of Lake
Roland Drive
9th Election District
2nd Councilmanic District
(1854 Circle Road)

Christine O. and Ross B. Diffenderffer, Jr.
Petitioners

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* **CASE NO. 2011-0197-A**

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Office of Administrative Hearings for consideration of a Petition for Variance filed by the legal owners of the subject property, Christine O. and Ross B. Diffenderffer, Jr. Petitioners are requesting Variance relief as follows:

- From Section 400.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow an accessory structure (detached garage) in the front yard in lieu of the required rear yard; and
- From Section 400.3 of the B.C.Z.R. to allow an accessory structure (detached garage) to have a height of 25 feet plus a cupola in lieu of the required 15 feet maximum.

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

Appearing at the requisite public hearing in support of the variance request were Petitioners Christine O. and Ross B. Diffenderffer, Jr. and Bruce Doak with Gerhold, Cross & Etzel, Ltd., the professional land surveyor who prepared the site plan and who is assisting the Petitioners in the permit process. Beth Gregory and Hugh Calkins, neighboring owners represented by J. Carroll Holzer, Esquire, attended the hearing and opposed the Petitioners’ request. Jim Patton, an engineer, also attended the hearing on behalf of the Protestants. Finally, Peggy Squitieri of the Ruxton

Riderwood Lake Roland Area Improvement Association, Inc., attended the hearing, and noted that her organization took no position on the request.

The undersigned received three letters of opposition from three neighboring owners: Beth Gregory and Hugh Calkins, Thomas W. Haines and William J. and Lisa M. Tate. They strongly oppose the requested variances.

Testimony and evidence offered revealed that the subject property comprises approximately 9/10 of an acre, and is improved with a three story concrete and frame dwelling. Petitioners seek to construct a 2 story garage on the southeast side of their lot, which faces the properties owned by Ms. Gregory and Mr. Calkins and Mr. Haines.

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 January 14, 2011 which indicates that the property is within the Ruxton Riderwood Lake Roland Design Review area. However, the accessory structure is less than the 50% of the floor area of the dwelling, the threshold required for a Design Review Panel public hearing.

Based upon the testimony and evidence presented, I am persuaded to deny the request for variance relief. Simply put, the Petitioners have failed to adduce sufficient evidence to carry the weighty burden placed on them by *Cromwell v Ward* and its progeny. That line of cases makes clear that variance relief should not be granted unless the applicant can show that his property is unique in some significant way, and that the denial of the variance would impose a hardship upon him. Stated otherwise, the “need sufficient to justify a variance must be substantial and urgent and not merely for the convenience of the applicant.” *McLean v. Soley*, 270 Md. 208 (1973). That standard is not met in this case.

Here, the Petitioners seek to build the garage as a space for their vehicles and as an activity space for their children. They testified that they proposed to construct at the southeastern portion of their lot, so as not to disturb the septic area. Although the renderings of the garage indicate that it would be an attractive structure, the reality is that, to an outside observer, it could be a separate dwelling. The proposed garage would be over 2,400 square feet and would be situated on the opposite end of the lot from the existing home. In these circumstances, the garage would not be “subordinate” and “incidental to” the main dwelling, as is required for all “accessory buildings” under the B.C.Z.R. Mr. Doak conceded – as he must – that there is nothing “peculiar” about the shape or topography of the Petitioners’ lot, and thus Petitioners cannot satisfy B.C.Z.R. Section 307. The crux of Petitioners’ case was that the existing septic area constrained their choices as to where to locate the garage. But the evidence on this issue – consisting mainly of hearsay statements attributed to Rob Powell, a Department of Environmental Protection and Sustainability employee, and a septic contractor, was not convincing. Even if the undersigned was in a state of equipoise concerning whether to grant the requested relief, the vigorous opposition from Petitioners’ three adjoining neighbors militates in favor of denying the variance.

Mr. Calkins testified that approval of the variance would have a very negative impact on his property – both in terms of property value but also privacy and the views and setting he enjoys. In addition, a letter was sent by Thomas W. Haines of 1860 Circle Road dated January 27, 2011, which was marked and accepted into evidence as Protestant’s Exhibit 9. Mr. Haines strongly opposes the requested variance as the new structure will tower above his property and the Calkins’ property. He is also concerned that a structure of this size will be used for purposes other than a garage and could potentially be another dwelling. Mr. Haines is also concerned about the removal of a significant amount of old growth trees in order to construct the structure. A letter was also

received from Mr. Tate (Protestant's Exhibit 8), who opposed the request. This vocal opposition from Petitioners' adjoining neighbors certainly suggests that the grant of variance relief would not promote the "general welfare", and that is an additional factor in the analysis. B.C.Z.R Section 307.

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 request should be DENIED.

THEREFORE, IT IS ORDERED this 18th day of February, 2011, that Petitioners' Variance request as follows:

- From Section 400.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to allow an accessory structure (detached garage) in the front yard in lieu of the required rear yard; and
- From Section 400.3 of the B.C.Z.R. to allow an accessory structure (detached garage) to have a height of 25 feet plus a cupola in lieu of the required 15 feet maximum

be and is hereby DENIED.

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

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/pz