

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N/Side of Springlake Drive, 213' W		
of the c/line of Hartham Court	*	OFFICE OF ADMINISTRATIVE
8 th Election District		
3 rd Council District	*	HEARINGS FOR
(2448 Springlake Drive)	*	BALTIMORE COUNTY
	*	CASE NO. 2011-0299-A
Sharlene I. Schnepfe		
<i>Petitioner</i>		

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed by the legal owner of the property, Sharlene (Sherry) I. Schnepfe. The Petitioner is requesting Variance relief under Section 1B02.3.B of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an attached garage with side yard setback of 5 feet and a sum of both sides of 15 feet in lieu of the required 15 feet and 25 feet, respectively. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the variance request was Petitioner Sherry Schnepfe and James Martz with Endless Construction, the contractor who prepared the site plan and is assisting the Petitioner through the permitting process. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. Appearing in opposition from the Springlake Community Association were C. Warren, Julie and Paul Gleitsmann of 2446 Spring Lake Drive, Warner G. Welsh of 2506 Londonderry Road, Eric Rockel of 1610 Riderwood Drive, Brad Milhern of 2520 Girdwood Road, Benjamin Mell of 241 Treherne Road, Jeannette Lagorio of 2519 Girdwood Road, and Elizabeth D Hansen of 2517 Girdwood Road. Also appearing was Gary Hucik, a Code

Inspector/Enforcement Officer with the Department of Permits, Approvals and Inspections.

Prior to the hearing, the undersigned received a packet from Elizabeth Hansen, President, Springlake Community Association (“Association”). The Association opposes the requested variances and alleges that Ms. Schnepfe failed to secure approval from the Association prior to construction. Whether or not Petitioner has violated the bylaws and/or covenants of the Association is irrelevant for present purposes. The sole function of this proceeding is to determine whether Petitioner is entitled to variance relief under County and State law.

This matter came to the Office of Administrative Hearings as a result of a complaint registered with the Code Enforcement Division of the Department of Permits, Approvals and Inspections¹. A Code Inspections and Enforcement Correction Notice was issued to Petitioner February 7, 2011, alleging illegal enclosure of existing carport. Hence, Petitioner filed the instant variance request.

Testimony and evidence offered revealed that the subject property is rectangular in shape, contains 16,647 square feet and is improved with a two-story brick and frame dwelling zoned D.R.3.5. The Petitioner enclosed a carport that was the subject of a 1999 variance case (discussed below) and now seeks variance relief to legitimize the “on the ground” site conditions.

The Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. The only substantive comment was from Dennis Kennedy of the Bureau of Development Plans Review, who advised that the garage/carport must be located at least six (6) feet from a County storm drain easement which runs alongside Petitioner’s property.

In 1998, Mr. David DeJong, Trustee (a prior owner of the premises at 2448 Spring Lake Drive) was granted variance relief in connection with an attached carport at the side of the home.

¹ Case No: CO-0088716

Specifically, then Deputy Zoning Commissioner Timothy Kotroco permitted the owner to construct “an open projection (carport canopy) with a side setback of 5 feet in lieu of the required 11.25 feet, and a sum of the side yards of 15 feet in lieu of the required 25 feet.” See Case No. 99-71-A. Significantly, the B.C.Z.R. defines a carport as a structure “open on three sides.” B.C.Z.R. § 301.1.A. Such a structure was built and remained on the subject premises until early 2011.

On or about January 26, 2011, Petitioner engaged a MHIC contractor to construct a solid wall on the outside of the open carport. At or about the same time, Petitioner was informed by Inspector Gary Hucik that a building permit was required for such construction. On January 31, 2011, Petitioner applied for and received a building permit to “enclose portion of an existing attached carport.” Thereafter, on February 7, 2011, Petitioner was issued a correction notice by Mr. Hucik, directing Petitioner to resubmit the permit to reflect the prior variance granted in 1998 by Deputy Zoning Commissioner Kotroco. Petitioner stated she was unaware of this variance – she bought the home in 2006 – and apparently the Zoning Office was as well, since the permit approval does not reference the case or even provide the applicable side yard setbacks for what was now going to be an attached garage.

The 1998 variance case determined, of necessity, that Petitioner’s property was unique and Petitioner (the prior owner) would experience a practical difficulty if strict compliance with the B.C.Z.R. was required. Such a ruling in effect attaches to the property – it is in the nature of an in rem judgment – and runs with the land, such that the present Petitioner is the beneficiary of same. As such, there is little difficulty granting variance relief in the present case, on the same rationale found in Case No. 99-71-A. So that the record is clear, the footprint of the carport/garage will remain the same, and this is an important factor in connection with the setback from the County’s stormwater easement. Simply put, without a field survey it is

impossible to determine just how close the garage is located to the Baltimore County easement, but what is clear is that the grant of relief herein will not result in any further incursion beyond that approved over 13 years ago. The prior zoning Order permitted a five feet (5) side yard setback, which itself is at odds with the 6 foot setback requirement in Mr. Kennedy's letter.

In terms of technical zoning requirements, the only change is that by enclosing the side wall, the structure is now a garage which requires side yard setbacks of 15 feet and a sum of side yard setbacks of 25 feet. B.C.Z.R. § 1B02.3.B. These are virtually identical to the setbacks applicable to the carport. (The only difference being that the carport was permitted to project 25% into the side yard, hence Mr. Kotroco's Order referencing an 11.25 foot setback). The photographs submitted reveal that Petitioner's property is attractive and well-maintained, and the Petitioner testified that she desired to enclose the side wall to buffer the strong winds and accumulation of snow that has plagued her in recent years.

I am not unmindful of the vocal opposition from the community, and respect and appreciate their input at the hearing. The tension and animosity between the Petitioner and members of the community was palpable, and in large part was due to what Protestants believed was Petitioner's flouting of community association bylaws and requirements. While in no way minimizing the importance of such covenants, which exist to preserve communities, this Office is without authority to enforce same unless they are expressly incorporated in a prior zoning Order, and there was no evidence of that having been done in this case. Blakehurst Community v. Baltimore County, 146 Md. App. 509 (2002) (community covenant agreements enforceable by Zoning Commissioner only when expressly incorporated into prior order).

Considering all of the testimony and evidence presented, I am persuaded to grant the requested 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.

