

<b>IN RE: PETITION FOR ADMIN. VARIANCE</b>	*	BEFORE THE
W side of Oak Drive, 240 feet N of the		
c/l of Gary Drive	*	OFFICE OF
1 <sup>st</sup> Election District		
1 <sup>st</sup> Councilmanic District	*	ADMINISTRATIVE HEARINGS
<b>(116 Oak Drive)</b>		
	*	FOR BALTIMORE COUNTY
Mark T. and Deborah L. Neebe		
<i>Petitioners</i>	*	<b>Case No. 2011-0142-A</b>

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**ORDER AND OPINION**

This matter comes before the Office of Administrative Hearings as a Petition for Administrative Variance filed by the legal owners of the subject property, Mark T. and Deborah L. Neebe for property located at 116 Oak Drive. The Variance request is from Sections 1B02.3.C.1 and 400.3 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed dwelling addition with a 10 feet setback in a side yard and a sum of sides of 28 feet in lieu of the required 15 feet and 40 feet respectively, and to permit a proposed detached garage with a height of 19 feet in lieu of the maximum allowed 15 feet. The subject property and requested relief are more particularly described on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

On November 18, 2010, former Deputy Zoning Commissioner Thomas H. Bostwick called for a formal hearing on this matter because the permit history of this matter indicates that the building permit originally issued for Petitioners’ garage was based on an altered permit application that changed the garage height from the permitted 15 feet to 18 feet. Later when a Code Inspector responded to the property, he measured the height from the grade level to the peak of the structure at 21 feet. Thereafter, the permit was rescinded by Permit Processing and further work was ordered to cease. As is policy, properties with outstanding zoning/code enforcement violations

should not be handled as Administrative Variances. The hearing was subsequently scheduled for Thursday, February 17, 2011 at 11:00 AM in Room 205 of the Jefferson Building, 105 West Chesapeake Avenue, Towson, Maryland. In addition, a sign was posted at the property and an advertisement was published in *The Jeffersonian* newspaper, giving neighbors and interested citizens notice of the hearing.

It should be noted that this matter came before me as a result of a complaint registered with the Code Enforcement Division of the Department of Permits and Development Management.<sup>1</sup> A Code Inspections and Enforcement Correction Notice and Stop Work Order was issued to Petitioners on October 1, 2010, for falsifying a building permit application by changing the garage height from 15 feet to 18 feet. Hence, Petitioner filed the instant variance request.

Appearing at the public hearing in support of the variance requests was Petitioner Mark T. Neebe. There were no Protestants or other interested persons in attendance at the hearing.

After an initial discussion with Mr. Neebe, it was determined that the variance request should be modified to allow the height of the garage to be constructed to a height of 21 feet in lieu of the maximum allowed 15 feet. The purpose of amending the variance request was to allow for discrepancies in the method of measuring the height of a garage so as not to cause any further problems for Mr. Neebe in the furtherance of his completion of this garage. Past instances have proven that some building inspectors measure to the peak of a garage in different fashions depending on the grade of the property and therefore to make sure that Mr. Neebe has the relief he absolutely needs to finish the garage, the variance request shall be amended to allow the garage to be built to a height of 21 feet. However, as discussed with Mr. Neebe, he does not intend to go

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<sup>1</sup> CO-0085128

any higher than 19 feet based on the way he measures to the peak of his garage. Mr. Neebe testified that he is undergoing renovations to his existing dwelling where he has lived with his wife and children for the past 12 years. Mr. Neebe is adding an additional room on the side of the dwelling which will accommodate a new bathroom for his children. In order to proceed with the construction of that addition on the side of his dwelling, the side yard setback relief is necessary. In addition, Mr. Neebe is constructing a garage on his property which will contain needed storage above. As a result of the demand for additional storage, the height variance is necessary for the garage. Mr. Neebe and his family enjoy living on this property and hope to make these improvements so as to accommodate the growing needs of his family. Based on the testimony offered at the hearing, I find no reason why the variance should not be granted.

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 November 9, 2010 which states that the existing dwelling is a distinctive older house located in the Central Catronsville/Summit Park National Register Historic District. The proposed garage is partially constructed. The proposed addition will be highly visible from Oak Drive. The proposed garage will have some visibility from Oak Drive. It appears that a large addition has been constructed to the rear of the original dwelling. The proposed addition and the proposed garage should be architecturally consistent and compatible with the original part of the existing dwelling.

After 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. I further find that Petitioners would suffer practical difficulty and undue hardship if the variance were to be denied. Finally, I find that the

variance 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.

Although the Office of Planning did not make any recommendations related to the garage height and usage, I will impose conditions 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.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be GRANTED.

THEREFORE, IT IS ORDERED, by the Administrative Law Judge for Baltimore County, this 7<sup>th</sup> day of March, 2011 that a Variance from Sections 1B02.3.C.1 and 400.3 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed dwelling addition with a 10 feet setback in a side yard and a sum of sides of 28 feet in lieu of the required 15 feet and 40 feet respectively, and to permit a proposed detached garage with a height of 21 feet in lieu of the maximum allowed 15 feet is hereby granted, subject to the following:

1. Petitioners may apply for their building permit 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, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. The Petitioners or subsequent owners shall not convert the subject accessory structure into a dwelling unit or apartment. The structure shall not contain any sleeping quarters, living area, kitchen or bathroom facilities.
3. The accessory structure shall not be used for commercial purposes.
4. The proposed addition and the proposed garage should be architecturally consistent and compatible with the original part of the existing dwelling.

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

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Signed  
TIMOTHY M. KOTROCO  
Administrative Law Judge  
for Baltimore County

TMK/pz