

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
NE side of Cameron Ridge Court; 45 feet		
E of the c/l of Quiet Valley Court	*	DEPUTY ZONING
7 th Election District		
3 rd Councilmanic District	*	COMMISSIONER
(610 Cameron Ridge Court)		
	*	FOR BALTIMORE COUNTY
Charles L. Brigermann		
<i>Petitioner</i>	*	Case No. 2011-0035-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Administrative Variance filed by Charles L. Brigermann, the legal property owner, for property located at 610 Cameron Ridge Court. The Variance request is from Section 400.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed detached accessory structure (garage) to be located in the side yard of the dwelling in lieu of the required rear yard, and to amend the Final Development Plan of Cameron Mill, Section 2, Lot 52 only. The subject property and requested relief are more particularly described on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

This matter was originally filed as an Administrative Variance, with a closing date of August 23, 2010. On August 9, 2010, Bryan Beyrodt, residing at 607 Cameron Ridge Court, filed a Formal Demand for Hearing. The hearing was subsequently scheduled for Thursday, September 2, 2010 at 2:00 PM in Room 106 of the County Office Building, 111 West Chesapeake Avenue, Towson, Maryland. In addition, a sign was posted at the property on August 8, 2010 and an advertisement was timely published in *The Jeffersonian* newspaper, giving neighbors and interested citizens notice of the hearing.

Appearing at the public hearing in support of the requested relief was Petitioner Charles L. Brigermann and his wife, Jo Ann Brigermann. Petitioner was represented by Fred Lauer, Esquire. The case garnered interest in the community and several concerned citizens appeared as Protestants in opposition to the variance request. These included the aforementioned Bryan Beyrodt of 607 Cameron Ridge Court, as well as Brett Moritz of 613 Cameron Ridge Court, Rob Galla of 609 Cameron Ridge Court, Darlene Rendek of 611 Cameron Ridge Court, John Wachter of 19509 Cameron Mill Road, and Frank and Karen Buck of 19912 Quiet Valley Court. Frank Borgerding, Esquire appeared as attorney for the Protestants as well as the Cameron Mills Homeowners Association.

Testimony and evidence presented in support of the variance request revealed that the subject property is an irregular shaped lot and consists of approximately 1.737 acres, more or less, zoned R.C.5. The property is identified as Lot 52 in the "Cameron Mill" subdivision and is located on the north side of Cameron Ridge Court, south of Bentley Road and west of Cameron Mill Road, in the Parkton area of Baltimore County. Petitioner purchased the lot in 1999 and improved the property with a two-story single-family dwelling and attached two car front loading garage that he designed and built in 2000-01. An asphalt driveway leads from Cameron Ridge Court to the two car garage, with a parking pad situated just to the left of the main driveway. At this juncture, Petitioner desires to construct a one-story garage accessory structure at the left side yard of his property (as one faces the property from the street). As shown on the site plan, the garage would be located approximately 58 feet from the existing dwelling, 76 feet from the street at Cameron Ridge Court, 140 from the western side yard boundary, and 100 feet from the rear yard boundary. Petitioner indicated that due to the wooded nature of his lot and because of the fact he has three cars he would like to store out of the weather elements, he

desires to construct the aforementioned detached garage. As will be discussed in his testimony, variance relief is necessary because Petitioner believes locating the garage in the left side yard is the most logical position, given the constraints and limitations of his property and weighing the “pros” and “cons” of other possible locations on his property.

In support of the variance request, Petitioner testified that he is employed as an engineering consultant and has personally designed and built eight homes previously, and also has a real estate license in the State of Virginia. He believes his background gives him a unique perspective and a certain expertise in deciding to locate the garage as depicted on the site plan. Most noteworthy in Petitioner’s view is the unusual shape of the property compared with others in the subdivision. The Final Subdivision Plat approved on January 12, 1994 for Section Two, Plat Three of the Cameron Mill subdivision, and a blow-up of the Second Amended Final Development Plan for Sections One, Two, and Three detailing Petitioner’s property, were marked and accepted into evidence as Petitioner’s Exhibits 2A and 2B, respectively. The Final Subdivision Plat shows Petitioner’s property vis-à-vis other properties in the neighborhood. As noted by Petitioner, while most of the properties in the subdivision have variations of a rectangular shape, his property has a very unusual configuration. The property has a very long and narrow side yard to the east, a shorter and somewhat deeper side yard to the west, a triangular shaped rear yard, and a comparatively smaller front yard due to the outward curvature of Cameron Ridge Court towards Petitioner’s property. An aerial photograph that was marked and accepted into evidence as Petitioner’s Exhibit 3 shows an overhead view of Petitioner’s property. As indicated by Petitioner, his property is almost entirely wooded except for the area where the home and driveway are located, and backs up to farmland. Additional photographs of Petitioner’s property were marked and accepted into evidence as Petitioner’s Exhibits 4A

through 4I. These photographs show the front yard of Petitioner's property and the proposed location of the garage in the side yard, as demonstrated by Petitioner's wife standing in the area where the garage would be situated. Petitioner pointed out that, as revealed in the photographs, the proposed garage would be barely visible in the side yard from Cameron Ridge Court.

In further support of the variance request, Petitioner submitted a drawing of his property, which was marked and accepted into evidence as Petitioner's Exhibit 5. This site plan of Lot 52 shows the location of Petitioner's home, the original building envelope, and the septic reserve area in the rear of the property. In conjunction with this plan, Petitioner testified that it would be impractical to place the garage accessory structure in the rear yard in the septic reserve area. He also stated that placing the garage in the rear yard would be difficult because the property slopes downward away from the home toward the rear of the property, and would also require extending the driveway into the rear yard and thus increasing the impervious surface on the property, plus the removal of additional trees from the property. Supplementary photographs that were marked and accepted into evidence as Petitioner's Exhibits 6 through 10 show Petitioner's property and the visual impact that would be associated with the proposed garage (similar to Petitioner's Exhibits 4A through 4I), which Petitioner maintains would be almost nonexistent. Petitioner also submitted elevation drawings that were marked and accepted into evidence as Petitioner's Exhibit 11. In addition, Petitioner submitted additional photographs that were marked and accepted into evidence as Petitioner's Exhibits 14 through 17. These photographs depict the sight lines to Petitioner's property and the proposed location of the garage from various vantage points on Cameron Ridge Court. Because Petitioner's home and the proposed location of the garage are set back from the road and because Petitioner's property is

densely forested, he contends that the garage would not be visible to traffic on Cameron Ridge Court and, hence, would have no detrimental impacts on the neighborhood.

In concluding the presentation in support of the variance request, Petitioner's attorney, Mr. Lauer, submitted an email sent from Petitioner to neighbors and the string of return emails from other neighbors that was marked and accepted into evidence as Petitioner's Exhibit 18. Petitioner's email explained his proposal for the garage and its location. The reply emails were from Ernie Price of 19901 Bentley Ridge Court, Bill Schulze of 19908 Bentley Ridge Court, Rich Bradford of 19905 Bentley Ridge Court, and Mike Ferreira of 19913 Quiet Valley Court, and were supportive of Petitioner's plans.

Testifying in opposition to the requested relief was Bryan Beyrodt of 607 Cameron Ridge Court. In response to questioning from the Protestants' attorney Mr. Borgerding, Mr. Beyrodt indicated that he lives just south of Petitioner and filed the Formal Demand for Hearing. During his testimony, he expressed great concern over the location of Petitioner's proposed detached garage. Although not opposed to Petitioner's desire for a one car detached garage, per se, he is opposed to placing the garage in the side yard along Cameron Ridge Court, especially where he believes there is enough space to build the garage in the rear yard or attached to the existing home. While the garage might be shielded from view to an extent during the full foliage months in the spring and summer, he is concerned that the garage would be very visible during the fall and winter when the leaves are off the trees. Mr. Beyrodt also testified that the character and aesthetics of the neighborhood are consistent with mostly two-story homes, generally consisting of over 2,500 square feet with attached two car garages and spacious lots. He believes that permitting this single, detached garage isolated to the side of the property relatively close to Cameron Ridge Court would detract from the overall appearance of the neighborhood and affect

home values as well. As for Petitioner's contention that the garage could not be placed in the rear yard due to the septic reserve area, Mr. Beyrodt believes this is merely an argument of convenience. He pointed to the fact that in constructing an in-ground pool in the rear yard of his property several years ago, he dealt with the same issue. He stated he was granted permission by the County to construct the pool and intrude into the septic reserve area, understanding that this could become an issue he might have to deal with in the future.

Also testifying in opposition to the requested variance were Brett Moritz of 613 Cameron Ridge Court, Darlene Rendek of 611 Cameron Ridge Court, and Rob Galla of 609 Cameron Ridge Court. These properties are located relatively across the street from Petitioner's property and as with Mr. Beyrodt's property, would likely be the most affected by Petitioner's plan to place the garage in the side yard of his property. A summary of their testimony indicates that they believe Petitioner's property is not so unique that the garage could not be placed in the rear yard. Constructing a garage in the side yard would have a visual impact due to its closeness to Cameron Ridge Court, as depicted in photographs of Petitioner's property along the road that were marked and accepted into evidence as Protestants' Exhibits 3, 4, and 5. In addition, examples of the potential impact of the garage during non-foliage months were illustrated in photographs that were marked and accepted into evidence as Protestants' Exhibits 6 and 7. These two photographs were taken by Mr. Galla of his property in Easter 2007 and show a relatively barren landscape without the leaves on trees.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Department of Environmental Protection and Resource Management dated September 8, 2010 which indicates that the proposed permit to build a garage will need to be reviewed by the Groundwater Management

Division because the septic area is close to the proposed garage site. The comment also states that this property is within a subdivision that was the subject of a C.R.G. development plan; therefore, it is exempt from forest conservation regulations. Forest buffer easements are not proposed to be impacted. There were no other comments provided by the ZAC agencies.

In his closing remarks, Mr. Lauer argued that Petitioner's variance request should be granted chiefly due to the unusual shape of the property and the impact of the existing location of the dwelling, the building envelope, and the septic reserve area in the rear of the property. He also stated that the proposed location of the garage in the side yard -- in a wooded area of the property -- would have practically no visual impact on anyone in the neighborhood or on traffic traveling on Cameron Ridge Court. Conversely, Mr. Borgerding argued that Petitioner has not satisfied its legal burden with respect to the variance request. He argued that while Petitioner's property has an unusual shape, this feature is not directly related to the need for a variance and does not preclude Petitioner from otherwise complying with the Regulation at issue. Petitioner still has ample area to place the garage in the rear yard, notwithstanding the shape of the property.

As stated at the conclusion of the hearing, this is a very difficult case. From a practical standpoint, I am very appreciative of Petitioner's desire to have a detached garage accessory structure in order to store his third vehicle, and I also believe Petitioner has attempted to place the garage in a location on the property that suits his needs. On the other hand, I am also mindful of the concerns expressed by the members of the Cameron Mill community in attendance at the hearing, each of whom testified that the proposed location of the detached garage would be at odds with the aesthetics of the neighborhood, and that the requested variance is not warranted in this case.

In considering a variance request, I am required under Section 307.1 of the B.C.Z.R. to determine, under a two prong test, first whether special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request; that is, a property's peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the Regulation's more severe impact on the specific property, and this uniqueness must drive the need for the variance. If that threshold requirement is met, only then am I to determine the next prong of whether strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship to Petitioner. *See, Cromwell v. Ward*, 102 Md.App. 691, at 721 (1995). In addition, variances are not favored under the law and presumed to be in conflict with the Regulations. As stated in *Cromwell* at 703, "[t]he general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances."

In the instant matter, Petitioner has clearly established that his property has an unusual shape, though in reviewing the Final Subdivision Plat, Section Two, Plat Three that was accepted into evidence as Petitioner's Exhibit 2A, it is evident that there are a number of lots in the subdivision that share an unusual shape. Although there is evidence of "uniqueness," the question is whether this characteristic, in conjunction with all the evidence presented, relates only to the subject property and results in a more severe impact on the property from the Regulation requiring an accessory structure to be placed only in the rear yard. In my judgment, Petitioner has not satisfied the first threshold requirement of Section 307.1 as interpreted in *Cromwell*.

Stated alternatively, a variance should not be granted when the proposed use can be achieved without the need for a variance. In this case, I note that Petitioner initially proposed a

location for the garage in the rear of the property, just behind the rear foundation line of the dwelling, as depicted in the May 26, 2009 Review Submittal Form to the Cameron Mill Architectural Review Committee, which was marked and accepted into evidence as Protestants' Exhibit 1. While it is perhaps not as convenient a location as that currently proposed, it is within the spirit and intent of Section 400.1 of the B.C.Z.R. In my view, the purpose of that section is to keep separate, detached structures from the front and side yards of properties where their visual and aesthetic impacts are most apparent. Petitioner has presented evidence that the garage would be located in a wooded area of his property without any visual impact; conversely, the Protestants have presented evidence that the wooded area becomes much less dense in the fall and winter months, and that the garage would be a visual blemish on the community for neighbors and passersby. I am certainly understanding of Petitioner's desire to expand the garage space of his home, and he has legitimate reasons for wanting to do so, but I believe granting the variance in this instance would frustrate the purpose and intent of Section 400.1.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the parties, I find that Petitioner's variance request should be denied.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 13th day of October, 2010, that the Administrative Variance request from Section 400.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a proposed detached accessory structure (garage) to be located in the side yard of the dwelling in lieu of the required rear yard, and to amend the Final Development Plan of Cameron Mill, Section 2, Lot 52 only, be and is hereby **DENIED**, subject to the following:

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