

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
NS side of Colgate Ave., 350' E side of		
East Central Avenue c/line	*	OFFICE OF
12 th Election District		
7 th Council District	*	ADMINISTRATIVE HEARINGS
(238 Colgate Avenue)		
	*	FOR BALTIMORE COUNTY
Rebecca Goetz		
Petitioner	*	CASE NO. 2012-0241-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of a Petition for Variance filed by the legal owner, Rebecca Goetz. The Petitioner is requesting Variance relief from Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a garage height of 25' in lieu of the permitted 15'. 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 Rebecca Goetz and Mark Mayeski, a friend who will construct the garage. A neighbor (Theresa Smith) attended the hearing and opposed the relief, and she was joined by Jonathan Willis, who also objected to the variance request. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R.

This matter was originally filed as an Administrative Variance, with a closing date of April 30, 2012. On April 30, 2012, Theresa Smith requested a formal hearing on this matter. The hearing was subsequently scheduled for Thursday, May 31, 2012 at 10:00 AM in Room 205 of the Jefferson Building, 105 West Chesapeake Avenue, Towson. 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. The Protestants alleged that the sign was taken down shortly after it was posted. Whether or not that is the case – and the Petitioner denies removing the sign – is irrelevant here, because the neighbors did receive actual notice and attended the hearing to voice their concerns. Largo Civic Ass'n. v. Prince George's County, 21 Md. App. 76 (1974).

Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. There were no adverse ZAC comments received from any of the County reviewing agencies.

Testimony and evidence revealed that the subject property is 12,000 square feet and zoned DR 5.5. Mr. Mayeski testified that he wanted to construct the 25' tall garage to allow him to store a boat and an antique vehicle he is restoring. The Petitioner also presented photos showing the limited closet space they have in their home, and indicated the garage would also permit additional space for household storage. Finally, Mr. Mayeski indicated the peaked roof would be more attractive and functional – as opposed to a flat roof that would comply with the 15' height limitation – but that variance relief was need.

Ms. Smith, who lives directly across the street from Petitioner, testified she was opposed to the relief, and she feared the 25' tall garage would block her views from the front of her home. In response, Mr. Mayeski testified that even a 15' tall garage permitted by law would obstruct Ms. Smith's views, and he also stated that many homes in the area were at least 30' tall, and that the garage would not be out of character or scale for the neighborhood.

Deciding cases of this nature is never easy, and I respect and appreciate the input and testimony of all who attended the hearing. While I am sympathetic to Ms. Smith's concerns regarding the visibility from the front of her home, I do not believe she will be impacted so severely that the relief should be denied. As seen on the site plan (Exhibit 1), her home at 249 is

located directly across from both the Petitioner's home and the proposed garage. Ms. Smith's view is already obstructed by the dwelling at 238 Colgate, which was constructed in 1920, and the proposed 25' tall garage would not be as tall as the Petitioner's dwelling (See Exhibit 2), so I do not believe Ms. Smith's enjoyment of her home would be greatly diminished.

Based upon the testimony and evidence presented, I am persuaded to grant the request for 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. Indeed, as shown on the site plan, Petitioner owns a "double lot" (comprising both 238 and 240 Colgate), which is twice as wide as that of neighboring homes. Thus, the proposed garage will not overcrowd the site or be out of character for the community. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioner.

Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md 53, 80 (2008).

Petitioner has met this test.

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is amply demonstrated by the lack of opposition from County reviewing agencies, and by the support of five of Petitioner's adjacent neighbors. Exhibit 3.

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

THEREFORE, IT IS ORDERED, this ____1____ day of June, 2012, by this Administrative Law Judge, that Petitioner's Variance request from Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a garage height of 25' in lieu of the permitted 15', be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. The Petitioner may apply for any permits and may be granted same upon receipt of this Order. However the Petitioner is hereby made aware that proceeding at this time is at her own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason this Order is reversed, the Petitioner will be required to return and be responsible for returning said property to its original condition.
2. The Petitioner 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.

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

JEB:pz

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