

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N side of Lance Avenue, 21 feet		
NE of the c/l of Tibson Avenue	*	OFFICE OF ADMINISTRATIVE
15 th Election District		
7 th Council District	*	HEARINGS FOR
(944 Lance Avenue)		
	*	BALTIMORE COUNTY
Violet McElwee		
<i>Petitioner</i>	*	CASE NO. 2012-0094-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 owner of the property, Violet McElwee. The Petitioner is requesting Variance relief from Section 400.3 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a garage in the rear yard of an existing single family dwelling with a height of 23 feet in lieu of the required 15 feet, and to amend the previous Order and plan in Case No. 2000-0116-A. 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 Wayne Jacobs II, and Geneva Jacobs, grandson and daughter of the Petitioner, respectively.

The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R. There were no Protestants or other interested persons in attendance, and the Petitioner indicated his neighbors were strongly supportive of his request.

This property was the subject of a previous administrative variance zoning request in Case No. 2000-0116-A. In that case, Petitioner requested variance relief from Section 400.1 of the B.C.Z.R. to allow an accessory structure (detached garage) with a height of 18 feet in lieu of the maximum permitted 15 feet. The request was approved by Timothy M. Kotroco, Deputy Zoning

Commissioner, on October 15, 1999.

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 citation was issued to Petitioner on May 26, 2011, for constructing a second floor addition to the garage without proper permits. Following a hearing, Administrative Law Judge Stahl imposed a \$500 fine (suspended) and ordered Petitioner to obtain a building permit “before anything else was done.” Hence, Petitioner filed for Variance relief to “legitimize” the height of the structure.

Thereafter, the Petitioner submitted on July 7, 2011, a letter to the Zoning Review Office requesting to increase the height of the subject garage to a height of 22 feet. In a letter dated July 12, 2011, the request was disapproved because it was not within the spirit and intent of the zoning request in Case No. 2000-0116-A.

Testimony and evidence offered revealed that the subject property is 5,220 square feet in size, and is improved by a single family dwelling constructed in 1954. The detached garage in the rear yard was built a few years later, and underwent significant remodeling in 2000. Petitioner now wants to construct the roof on the second floor of the garage to 23 feet, to provide structural integrity and to accommodate design choices, including skylights.

The Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. Comments were received from the Department of Environmental Protection and Sustainability, dated November 2, 2011, concerning compliance with the goals of the State-mandated Critical Area Law listed in B.C.Z.R. Section 500.14. These comments will be incorporated into the Order which follows.

¹ Case No: CO0092012

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.

I further find that the granting of the relief as set forth herein can be accomplished without injury to the public health, safety, and general welfare. Therefore, in all manner and form, I find that variance relief can be granted in accordance with the requirements of Section 307 of the B.C.Z.R. as articulated in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

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

THEREFORE, IT IS ORDERED, this 30th day of November, 2011 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 in the rear yard of an existing single family dwelling with a height of 23 feet in lieu of the required 15 feet, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. The Petitioner may apply for a building permit 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.
4. Compliance with the ZAC comments made by the Department of Environmental Protection and Sustainability dated November 2, 2011, a copy of which is attached hereto and made a part hereof.

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