

Case 3304

**OFFICIAL DECISION  
BOARD OF ZONING APPEALS  
CARROLL COUNTY, MARYLAND**

APPLICANT: Gary Owings  
908 Lorraine Drive  
Finksburg, Maryland 21048

AGENT: B.P.R., Incorporated  
359 Manchester Road  
Westminster, Maryland 21157

REQUEST: A variance reducing one minimum required side yard of 12 feet to about 3 feet in conjunction with converting an attached double garage into a single garage by demolishing about one half of the existing garage

LOCATION: 908 Lorraine Drive in Election District 4; Harris Heights subdivision, Section 3, lot 18 recorded in Carroll County Plat Records in Book 8, page 41

BASES: Article 7, Section 7.5; Article 15, Section 15.5; Ordinance 1E (The Carroll County Zoning Ordinance)

HEARING HELD: December 27, 1989

On December 27, 1989, the Board of Zoning Appeals heard testimony and received evidence concerning the request for a variance reducing one minimum required side yard requirement of 12 feet to about 3 feet.

The Board visited the site on December 19, 1989, prior to the public hearing.

The application, testimony and evidence comprising the record of this case are hereby included by reference in this decision. Based on the record, the Board will approve the variance. The pertinent findings include the following facts.

**FINDINGS OF FACT**

The applicant, Mr. Owings, owns lots 15 and 18 of Section 3 of Harris Heights, a residential subdivision. Lot 18 is 125 feet in width by 200 feet in depth. A minimum building line of 40 feet, paralleling the southerly side and easterly frontage of the lot, was apparently included on the subdivision plat recorded in the Carroll County Plat Records in Plat Book 8 at page 41. As shown by a location survey, Applicant's Exhibit 2, a dwelling with

an attached garage is located 47 feet, plus or minus, from the southerly side property line. The garage extends across the northerly side property line, onto lot 15.

Mr. Owings testified that when he purchased the properties in November of 1987, he believed that the dwelling and garage were located on lot 18, and that lot 15 qualified for construction of a separate dwelling. Mr. Owings discovered the encroachment in preliminary efforts to obtain a permit for construction of a dwelling on lot 15. In addition, Mr. Owings discovered that it would not be possible to alter the existing lot lines of the subdivision lots and be able to comply with regulations pertaining to on-site wells and sewerage disposal systems.

In order to construct a dwelling on lot 15, that part of the garage situated on the lot must be removed. By demolishing approximately one half of the garage, the encroachment on lot 15 would be removed and a side yard of approximately 3 feet would be established as a side yard on lot 18 abutting lot 15.

The alternative to removing one half of the garage is to remove all of the garage. Mr. Owings would then have the option of constructing a detached garage within the rear yard of lot 18, at least 6 feet from the dwelling and 5 feet from the side property line. [Article 15, Section 15.2(b); Ordinance 1E.] Placement of the garage 5 feet from the side property line would require amendment of the drainage and utilities easement paralleling the side property line from in 6 feet in width to 5 feet in width. Without amendment of the drainage and utilities easement the detached garage could be located 6 feet from the side property line and 6 feet from the house.

Residents and owners of adjacent properties testified in opposition to the request, claiming that in their opinion the variance would depreciate the value of their properties, lead to an increase in vehicular traffic by development of a dwelling on lot 15, and violate a deed restriction pertaining to location of buildings within 10 feet of property lines.

However, the protestants did not introduce any evidence to substantiate that the reduced minimum side yard would devalue residential properties in the subdivision. Nor did the protestants establish why additional vehicular traffic resulting from construction of a dwelling on lot 15 would be inconsistent with the character of the residential subdivision.

The deed restrictions, cited by opponents of the request, are not zoning regulations, and are not enforceable as zoning regulations.

APPLICABLE LAW

The property is zoned "R-20,000" Residence District as shown on zoning map 24B. The land use provisions for that district are specified in Article 7 of Ordinance 1E. Section 7.5, Lot area, lot width and yard requirements was amended by Ordinance Number T-74, effective March 1, 1988, reducing the minimum required side yards from 20 feet to 12 feet.

Article 20, Definitions; Section 20.39, Variance, reads:

"A variance is a relaxation of the terms of the Zoning Ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the results of the actions of the applicant, a literal enforcement of the Ordinance would result in unnecessary and undue hardship."

Article 15, Exceptions and Modifications; Sections 15.0, Generally, and 15.5, Variance (Amended through 2-25-76) read respectively:

"The regulations specified in this Ordinance shall be subject to the following exceptions, modifications, and interpretations:"

"The Board may authorize, upon appeal, in accordance with Section 17.2, variances from height, lot area, lot width, yard regulations, parking space requirements, sign regulations, and distance requirements specified in Section 4.12 and Section 14.31(c)4. The Board may grant such variance only in cases where the strict compliance with the terms of this ordinance would result in practical difficulty and unreasonable hardship, and only if in strict harmony with the spirit and intent of such regulations and only in a manner so as to grant relief without substantial injury to public health, safety and general welfare."

REASONING

The circumstances in this case are unusual. Removal of either one-half or all of the garage is necessary in order to allow construction of a dwelling on lot 15 in compliance with applicable health department and zoning requirements. To deny the request, thereby necessitating removal of the entire garage would be excessively harsh in light of the fact that a detached

garage could be constructed 6 feet from the dwelling, within the rear yard, and 5 or 6 feet from the side property line.

Reduction of the minimum required side yard of 12 feet to 3 feet will not substantially affect adjacent properties other than lot 15. Mr. Owings can minimize the proximity of the attached garage to lot 15 by designing and locating the proposed dwelling on lot 15 accordingly.

Authorization of the variance is reasonable and necessary in order to preclude practical difficulty and unreasonable hardship that would otherwise result.

CONCLUSION

Therefore, the Board hereby authorizes the variance as requested.

Jan. 11, 1990  
Date

John Totura  
John Totura, Chairman