

Tax Map/Block/Parcel
No. 78-14-591

Building Permit/Zoning
Certificate No. 90-2567

Case 3419

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANT: Daniel Ondercin
7621 Patapsco Drive
Sykesville, Maryland 21784

ATTORNEY: Mr. Jerry D. Focas, Esquire
22 West Pennsylvania Avenue
Towson, Maryland 21204-5005

REQUEST: Variance reducing the minimum building line of 40 feet to about 23 feet for a proposed two-story addition, including a garage, to the existing dwelling

LOCATION: 7621 Patapsco Drive in Election District 5; Patapsco Estates subdivision, Section 5, lot 15 recorded in Carroll County Plat Records in book 18, page 17.

BASES: Article 66B, Section 5.04 of the Annotated Code of Maryland; Article 7, Section 7.5* and Article 15, Section 15.5; Ordinance 1E. (The Carroll County Zoning Ordinance)

HEARING HELD: August 22, 1990

On August 22, 1990, Mr. Daniel G. Ondercin and Susan T. Ondercin, his wife, appeared before the Board with their attorney, Mr. Jerry D. Focas, and presented testimony and evidence in behalf of the variance request for reduction of the minimum building line of 40 feet to about 23 feet for a proposed two-story addition, including a garage, to the existing dwelling at 7621 Patapsco Drive.

The Board visited the site August 20, 1990, 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.

*Due to an administrative error, the zoning district of the property was incorrectly identified on the Application for Hearing as "Conservation." The correct zoning district is "R-20,000" Residence District.

FINDINGS OF FACT

The pertinent findings determining the Board's decision include the following facts:

The property is located to the rear of a cul-de-sac, Patapsco Drive, which provides access to lots within Patapsco Estates subdivision. The area of the lot is .86 of an acre or 37,461 square feet. A well, supplying water to the dwelling, and the sanitary sewerage disposal system are located on the property. A use in common driveway extending from the cul-de-sac serves the applicants' property (lot 15) and lot 14 located to the rear, or south of lot 15. The minimum building line of 40 feet paralleling the northwesterly property line, dividing lot 16 owned by Leslie S. Schuman and Mindy F. Schuman from the applicants' lot, was established with recordation of the subdivision plat in the county plat records in book 18, page 17.

The dwelling is located at the highest elevation of the lot, and is architecturally oriented to the southwest so that a side of the dwelling faces the adjoining lot of Mr. and Mrs. Schuman. The distance between the dwelling and the property line is 49 feet. The 26 feet by 30 feet addition is proposed on the northwesterly side of the dwelling, extending across the minimum building line to about 23 feet from the property line. The addition will require excavation for constructing the garage, reducing the elevation of the driveway, and maintaining the same floor levels and roof elevation of the existing split foyer. The exterior construction materials will match, or be compatible with the existing brick and aluminum siding.

White pine trees are located along the common property line of the site and lot 16. The trees now provide effective screening between the side of Mr. and Mrs. Ondercin's home and the side of Mr. and Mrs. Schuman's home which is oriented to the northwest rather than the southwest as is the Ondercin's home. (Applicants' Exhibits 1 and 2 a-h.) The proposed addition will not harm the existing trees, and Mr. and Mrs. Ondercin plan to maintain them.

Conditions of the lot affecting the location of the proposed addition and garage in compliance with the applicable regulations include: a swale extending across the rear yard of the property providing for storm water drainage that would otherwise adversely affect the dwelling; the water supply well located in the rear yard; and, the topography of the lot, which slopes downward on the opposite side of the dwelling, and to a greater degree, to the architectural front of the dwelling where the sanitary sewerage disposal system is located. Furthermore, the addition to the dwelling, including the garage, is architecturally compatible only as proposed.

Mr. and Mrs. Schuman submitted a letter dated August 10, 1990, prior to the public hearing expressing strong opposition to the request. Their opposition includes concerns that reduction of the minimum building line to allow the addition will diminish their privacy, adversely affect their enjoyment in the use of their property, lessen the property's marketability, and possibly depreciate its value. Mr. and Mrs. Schuman were evidently influenced by both the administrative error that the properties were zoned "C" Conservation District and the opinion of several real estate agents that they had contacted regarding the requested variance.

During the public hearing a real estate agent, testifying on behalf of Mr. and Mrs. Ondercin, contradicted the opinions of the real estate agents contacted by Mr. and Mrs. Schuman, indicating that the proposed addition would increase the value of Mr. and Mrs. Ondercin's home which would be beneficial to Mr. and Mrs. Schuman's property and adjacent properties. (Applicants' Exhibit 5.)

APPLICABLE LAW

Unless otherwise noted, Articles and Sections cited below are of Ordinance 1E.

The property and surrounding land are within the area of zoning map 78A. In examining the zoning map and comparing it to the site location map used to post the Hearing Notice on the property, it is evident that Mr. and Mrs. Ondercin's property, as well as Mr. and Mrs. Schuman's property is zoned "R-20,000" Residence District, not "C" Conservation District. The nearest "C" Conservation District is proximate to the southerly property line of lot 14 of the subdivision which shares the use in common driveway with Mr. and Mrs. Ondercin's property.

Although the error of zoning districts and consequent citing of Article 5, Section 5.5 as part of the bases of this request merits notice within this decision, it is not fatal in deciding this case.

The land use provisions of the "R-20,000" Residence District are specified in Article 6. They include a minimum required lot area of 20,000 square feet, a lot width of 100 feet, a front yard (setback) of 40 feet, side yards of 12 feet each, and a rear yard of 50 feet for single family dwellings. The minimum building line of 40 feet depicted on the recorded subdivision plat corresponds to the minimum required front yard (setback) of the "R-20,000" Residence District.

Article 66B, Section 5.04 of the Annotated Code of Maryland provides that requirements incorporated on recorded subdivision plats to promote the objectives of zoning are enforceable as though part of the zoning ordinance.

Therefore, as notices of the public hearing described the variance request for reduction of the minimum building line fairly and accurately, except for citing Article 5, Section 5.5 instead of Article 7, Section 7.5, the application and notices are deemed to be legally sufficient to have held the public hearing and issue this decision.

Article 15, Exceptions and Modifications; Sections 15.0, Generally, and 15.5, Variance (amended 2/25/76), state respectively and in relevant part:

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...yard regulations.... The Board may grant such variance only in cases where 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

Use of the lot is restricted by its topography; the storm water drainage swale traversing the yard to the architectural rear of the dwelling (by regulation, a side yard); and, the locations of the water supply well and the sanitary sewerage disposal system serving the dwelling.

The minimum building line technically establishes the minimum required front yard, or setback on the lot, regardless of the architectural orientation of the principal building (including a dwelling) on the lot. However, in this case the yard is effectively an architectural side yard for the dwelling and the architectural front yard, which is technically a side yard, far exceeds that minimum requirement of 12 feet. In addition, the lot frontage of Mr. and Mrs. Schuman's lot 16 is the cul de sac, which means that the yard abutting Mr. and Mrs. Ondercin's lot 15 is a side yard. In effect, the architectural orientation of the two homes are side by side. Such orientation is usually more desirable than constructing the rear dwelling facing the side of the front dwelling. Furthermore, the relationship and privacy of the two dwellings has been improved with the establishment of the white pines providing landscape screening between the two homes.

Accordingly, the Board is convinced that authorization of the variance is justified, and that establishment of the addition, as

proposed, will enhance the value of Mr. and Mrs. Ondercin's house, and will not adversely affect either the use, marketability, or real property values of any of the adjacent properties.

CONCLUSION

Therefore, the Board hereby authorizes the variance reducing the minimum building line of 40 feet to about 23 feet, as requested, for the proposed addition to the existing dwelling.

Sept. 14, 1990
Date

John Totura
John Totura, Chairman

JDN/bmh/c3419dec
September 14, 1990