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Office of Zoning Administration
Neil M. Ridgely
Zoning Administrator

Notice of Decision

Case # ZA-784
Permit # 03-3087

Variance Request: For a reduction in the minimum side yard setback from 20 feet to 15 feet for an addition to the dwelling at 2590 Bollinger Mill Road, Finksburg, MD, Election District 4 by Bruce E. Crockett

Basis for Variance: Chapters 223-75 and 223-181 of the Carroll County Code of Public Local Laws and Ordinances.

Decision: Denied

Basis for Decision: This case was originated by a belated Building Permit application for the construction of an addition. In fact the addition was already completed at the time of the application. Building Permit Applications are reviewed as a matter of process by the Office of the Zoning Administration; at which juncture it was obvious that the addition would be within the setback area for the Agricultural District as established in Section 223-75 of the Carroll County Zoning Code.

A site visit by the Zoning Administrator indeed indicated that the variance and Building Permit were applied for after-the-fact, that the addition was a fait accompli.

The Zoning Administrator did have a conversation with Lt. Goss of the Baltimore City Watershed Police for background on the complaint as the Building Permit application appears to have been triggered by a complaint originating with Officer Verabault [sp] of that same City agency. Officer Verabault is no longer employed with the City. There were no protestants present at the hearing on October 1st.

When Mr. Crockett was asked whether he was aware that he needed the Building Permit prior to constructing the addition, he answered, "yes"; that he intentionally did not apply for the Permit.

When deciding on a variance under these circumstances the practical reality of a completed project should not be the deciding factor. Local authority to grant variances originates in Article 66B of the Annotated Code of Maryland. Section 1.00 (m) of Article 66 B defines Variance as: "a modification only of density, bulk, or area requirements in the zoning ordinance that is: 1) not contrary to the public interest; and 2) specified by the local governing body in a zoning ordinance to avoid a literal enforcement of the ordinance that, because of conditions peculiar to the property *and not any action taken*

by the applicant [emphasis added], would result in unnecessary hardship or practical difficulty. The issue of a self-imposed hardship or difficulty is specifically addressed in the seminal case law on variances, Cromwell v Ward (102 Md. App. 691, 1995) which dealt with a similar circumstance in Baltimore County. The Court ultimately reversed a decision by the Baltimore County Board of Appeals because there was no evidence that the subject property was peculiar or unusual and, thus, disproportionately affected by an area restriction (height in that particular incidence) nor that Ward's self-imposed hardship arising from the construction of an accessory building prior to obtaining a variance was grounds for granting the variance.

Additional criteria for both the Carroll County Zoning Administrator and the Board of Zoning Appeals is contained in Section 223-191 or the Carroll County Code of Public Local Laws and Ordinances. Using the factors outlined in Section 223-191, each element was considered in this decision. Since the addition was completed prior to the Crockett's obtaining a building permit or variance it is not possible to ascertain if some of the tree removal on Baltimore City watershed property was necessary to engage the project, therefore a determination cannot be made as to whether the addition would negatively affect the public health, safety, security, morals or general welfare (223-191). The addition apparently does not create dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood (223-191). Other elements having which were considered having no negative impact from the addition are:

A) the number of people residing or working in the immediate area
B) The effect of the proposed use upon the peaceful enjoyment of people in their homes.
C) The effects of odor, dust, gas, smoke, fumes, vibrations, glare, and noise upon the use of surrounding property values.

However, because the addition and any associated clearing / grading were performed prior to the Variance and Building Permit Application, it is impossible to distinguish the effect that granting the variance would have on:

A) The orderly growth of the community.
B) The conservation of property values.
C) The most appropriate use of the land and structures.

It cannot be determined if the addition could have been located elsewhere on the residence or if a detached accessory dwelling elsewhere on the lot would have suited the Crockett's specified purpose, which was to provide housing for the grandparents. In fact, much of the addition appears to have been complementary to the family or living room areas.

What is clear is that a case has not been made by the applicants that their property is unique to others in the neighborhood; that there would have been a practical difficulty to construct the addition elsewhere; or that an unreasonable hardship would have existed were they not able to construct the addition within the prescribed set-back area. It is also clear that the Crocketts knew that their property bordered a sensitive area owned by the City of Baltimore. Citing the Court of Special Appeals in Cromwell v. Ward, that:

> *"Unless there is a finding that the property is unique, unusual, or different, the [variance] process stops here and the variance is denied without consideration of practical difficulty or unreasonable hardship."... "Simply stated, the variance that is*

desired (and the difficulties that would exist if not granted) cannot be the determining source of the first prong of the variance process – an inherent uniqueness of the subject property not shared by surrounding properties."

In support of their decision in Cromwell v Ward the Justices cited Sibley v. Inhabitants of the Town of Wells, 462 A.2d 27, 30-31 (1983) wherein the Supreme Judicial Court of Maine upheld the denial of a variance, holding:

"[T]he need for a variance [must be] due to the unique circumstances of the property and not to the general conditions in the neighborhood;

...

[T]he hardship [must] not [be] the result of action taken by the appellant or a prior owner."

Additionally the Maryland Court of Special Appeals in Cromwell v. Ward cite at length from Marino v. Mayor and the City Council of Baltimore, 215 Md. 206, 137 A.2d 198, wherein the Court affirmed the Board of Appeals decision denying a variance. The language from that case most pertinent to the one at hand is:

"[S]elf-inflicted or self-created hardship...is never considered proper grounds for a variance." ... "Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that the practical difficulty or unnecessary hardship for zoning variance purposes cannot be self-inflicted."

I believe that to approve this variance would not only subvert the essence of the Carroll County Zoning Ordinance but would also undermine the fundamental Building Permit process. If applicants are rewarded with the grant of a variance in the face of an intentional bypass of an essential Building Permit, then the message to the public would clearly be that they should build first and ask for the permit later.

For the above stated reasons this variance is denied.

10 October 2003

Neil M. Ridgely
Zoning Administrator

Per Section 223-182 or the Carroll County Code of Public Local Laws and ordinances, appeals of this decision must be made within 30 days of the date of the decision to the Board of Zoning Appeals pursuant to Section 223-188 of the Carroll County Code. Unless timely appealed, parties may not thereafter challenge the Zoning Administrators decision.