

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
<b>(1 Kincaid Court)</b>		
10th Election District	*	OFFICE OF ADMINISTRATIVE
3 <sup>rd</sup> Council District		
Joseph A. Hosier & Lisa M. Hosier	*	HEARINGS FOR
Legal Owners		
	*	BALTIMORE COUNTY
Petitioners		
	*	<b>CASE NO. 2020-0239-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by Joseph A. Hosier and Lisa M Hosier (the “Petitioners”) for property located at 1 Kincaid Court, Baldwin (aka Kincaid Rd.) (the “Property”). The Petitioners are requesting variance relief to permit an addition onto the existing garage within the side yard setback of 25 ft. and a center line setback (from Kincaid Court) of 50 ft. in lieu of the required 75 ft. for each, per the Rural Deferred Planning Regulations (RDP-1972) and the Baltimore County Zoning Regulations (“BCZR”) §103.1.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. The Petitioners appeared at the hearing along with Bruce E. Doak of Bruce E. Doak Consulting, LLC who prepared and sealed a site plan (the “Site Plan”). (Pet. Ex. 1). There were no protestants or interested citizens who appeared.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and the Department of Environmental Protection and Sustainability (“DEPS”). Those agencies did not oppose the requested relief.

## **FACTS AND EVIDENCE**

The Property is a corner lot, approximately 0.77 acres. It was created as Lot 10 of the ‘Quinn Subdivision’ as outlined on a plat recorded in the Land Records of Baltimore County (PB 35/84) in or around 1972 (the “Plat”). (Pet. Ex. 2). It is zoned resource-conservation (RC 5). The Property borders on Sweet Air Road and Kincaid Ct. with one access driveway off of Kincaid Ct. (Pet. Ex. 1, 3). Sweet Air Road is a Baltimore County Scenic Route.

Viewing the Plat, the shape of the Lot is irregular in that it is asymmetrical, and it is unlike any other lot on the Plat. The Property is improved with a 2-story framed home with an attached garage on the western side, large enough for 2 vehicles. There are 4 adults living in the home. A chimney is located on the eastern side of the home. (Pet. Ex. 6D, 6K, 6L). On the eastern side of the Property is a row of mature trees which acts as a vegetative screen between the Property and adjacent home addressed at 4303 Sweet Air Rd. (Pet. Ex. 3). A deck/porch extends onto the back of the home. The rear yard has a private septic and sewer system. (Pet. Ex. 5, 6H, 6J). Unlike the adjacent properties (2 Kincaid Court and 3 Kincaid Court), the topography in the rear of the Property slopes downhill. (Pet. Ex. 3, 6G-6J).

The proposal here is for a 1-story, 25 ft. addition to the existing garage on the western side of the Property (the “Extension”), large enough for a third vehicle. (Pet. Ex. 1). The existing outer wall between the garage and the Extension will remain. The Extension will use the same siding as that on the home so that the view of the garage looking east will not change. Petitioners provided a sketch of possible locations for the Extension. (Pet. Ex. 4B).

## **DECISION**

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate

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

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

As described above, I find that the Property has unique physical characteristics which are different from the neighboring properties in regard to its shape as well as its topography in the rear. The home is typical for a home constructed in 1970-1980 with a single driveway and an existing, attached garage on the western side; on the eastern side is a chimney and mature line of trees. As such, the size of the home limits its available storage space.

I find that the Petitioners would suffer practical difficulty and unreasonable hardship if they were unable to build the Extension onto the existing garage on the western side as indicated on the Site Plan. Constructing the Extension on the eastern boundary would be practically impossible with existing chimney. While potentially meeting the eastern side setbacks, construction there would require additional grading resulting in more impervious surface for a new driveway connection, not to mention the intrusion that may result to neighbors at 4303 Sweet Air Rd.

Likewise, construction in the rear means the garage would be detached and therefore must be located in the 1/3 of the rear yard farthest removed from a street. BCZR, §400.1. A garage in the rear yard would be built into a slope, would be seen from the neighbors at 4303 Sweet Air Rd., and would increase the impervious surface on the Property. In effect, I find that if the variance relief for the Extension in the proposed location is denied, the Petitioners would be unable to build the Extension to the garage. I find that the proposed Extension is not only reasonable but necessary given the age and size of the home in relation to the number of adults living there. Given the facts of this case, I also find that this variance can be granted within the spirit and intent of the BCZR

and without harming the public health, safety, or welfare, particularly in light of the support of the surrounding property owners. (Pet. Exs. 7-8).

THEREFORE, IT IS ORDERED, this 25<sup>th</sup> day of **January 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance to permit a proposed garage Extension with a side yard setback of 25 ft. and a center line setback (of Kincaid Court) of 50 ft. in lieu of the required 75 ft. for each, per the Rural Deferred Planning Regulations (RDP-1972) and the Baltimore County Zoning Regulations (“BCZR”) § 103.1. to is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
2. The attached garage, including the Extension, shall not be used for commercial purposes.
3. Petitioners must comply with the DEPS and DOP ZAC comments, copies of which are attached hereto and made a part thereof.

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Signed  
MAUREEN E. MURPHY  
Administrative Law Judge  
for Baltimore County

MEM/dlm