CARROLL COUNTY GOVERNMENT
225 N. Center Street
Westminster, Maryland 21157
410-386-2980 888-302-8978
FAX 410-876-9252
T.D.D. 410-848-5355

Office of Zoning Administration
Neil M. Ridgely
Zoning Administrator

Notice of Decision

Case # ZA-791
Permit # 03-3393

Variance Request: For a reduction in the minimum front yard setback of 40 feet to 15 feet for a detached garage on property located at 1856 Snydersburg Road, Westminster, MD, in Election District 06 by Sharon Mogar

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: The applicants did not meet the primary tests for the grant of a variance, which is to substantiate that their property is unique to others in the neighborhood; that there would have been a practical difficulty to construct the detached garage elsewhere; or that an unreasonable hardship would have existed were they not able to construct the garage within the prescribed set-back area.

The basis for a variance is best established in case law through cite of the Maryland Court of Special Appeals in Cromwell v. Ward:

> *"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."*

A site visit by the Zoning Administrator indicated that there are probably other locations on the property that the garage could be located on, perhaps without the need for a setback variance or for a variance of lesser degree. Unique to this property is a shared use in common roadway, referred to New Cut Road, which is owned in fee by each of the property owners along the road. Testimony by John Agius and Michael Blum, property owners along New Cut Road opposed the variance. A letter from Douglas & Tammy Irwin in opposition to the variance was hand delivered at the hearing. Each opponent indicated that there were other locations on the Mogar property which would accommodate a detached garage.

While I appreciate the desire of the Mogar's to locate the garage in an area that is both convenient to them and which may best serve their needs, the essential tests for a variance were not evident. Additionally, reviewing the nine criteria for variance decisions contained in Section 223-191 of the Zoning Code, few would substantiate granting the variance. It is difficult to opine that relocating the garage elsewhere on the property would create an unnecessary hardship or pose a practical difficulty other than one which is self-imposed.

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.