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Office of Zoning Administration
Neil M. Ridgely
Zoning Administrator

Notice of Decision

Case # ZA-822
Permit # 04-0271

Variance Request: For a variance from the required minimum setback of 20 feet to 10 ½ feet for an existing garage [barn] due to the creation of in-fee strips for the proposed subdivision "Morsi Estates" at 7485 Morgan Road in Woodbine, MD. By Hala Morsi.

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:
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 tothe 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 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.

There are two primary tests which each applicant must prove to gain a variance:

1. That their property is unique or different to others.
2. That the applicant would encounter a practical hardship if the variance were not granted.

In this instance, a case has not been sufficiently made by the applicants that their property is unique to others in the neighborhood. The fact that there is an existing garage / barn on the property is not unique to many others in that rural location.

Although the applicant did explain that it would be a practical hardship for them to remove a portion of the existing structure to meet the 20 ft. setback, that hardship is actually self-imposed due to their subdivision of the property. While their locating the in-fee access strips where they have chosen to on the subdivision plan may be the most logical, they have chosen to create the subdivision knowing that the structure may be compromised in the process.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 cites 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."*

It is the opinion of the Zoning Administrator that an approval of the variance requestwould not meet the primary tests provided in §223-181C of the Carroll County Code of Public Local Laws and Ordinances, that application of the required setback will cause a practical difficuty or unreasonable hardship for the applicants because either or both are the result of actions by the applicant.

For the above stated reasons this variance is denied.

13 April 2004

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.