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-955
Permit # 05-2942

Variance Request: For a variance from the minimum side yard setback from 40 feet to 10 feet for a detached garage at 3189 Brigadoon Drive, Hampstead, MD in Election District 08 by William Dodson.

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

Decision: Denied

Basis for Decision:

In making this determination, the Zoning Administrator finds that the following criteria provided in Section 223-191 of the Carroll County Code that:

- There would be a detrimental effect on the people working or residing in the area
- There would be a negative impact on the orderly growth of the community
- There would be a detrimental effect on the peaceful enjoyment of people in their homes.
- That the use would have a negative effect on the conservation of property values.
- That there would be an effect from odors, dust, gas, smoke, fumes, vibrations, glare, and noise upon surrounding property values.

The applicant testified that they had received permission from the director of the Department of Planning to build within the Minimum Building Line. Mr. Dodson stated that he felt that his property is unique because a Minimum Building line was located on his side yard and that he was constrained from locating the garage elsewhere on the property because of the well and septic field locations, that the Department of Environmental Health would not allow him to move his septic area. There is currently a three car attached garage at the residence but Mr. Dodson collects automobiles and has several other recreational vehicles which he needs additional enclosed storage room for.

Ms. Timatha Pierce of Carrollton Road appeared to support the variance out of concern that locating it elsewhere on the property would place the detached garage closer to her residence. Mr. Steve Bamberger, also of the Brigadoon subdivision appeared to express concern that if the variance were not granted the garage would then be located closer to his residence, which he opposes. Mr. Bamberger also provided the Zoning Administrator a copy of the covenants for the Brigadoon subdivision, stating that he thought that locating the detached garage in the proposed location would violate the covenants. While the County is not a party to private subdivision agreements and not responsible for their enforcement, it would not be in the County's interests to issue decisions which run contrary to such covenants. Unfortunately, in the case at hand the the Architectural Committee mentioned in the Declaration of Restrictions(covenants) for Brigadoon was never appointed. A review of the covenants finds that they are still in effect until December 31, 2010 and while Section 3.3 of the covenants may address the proposed garage, failure of either the developer or the subdivision residentsto appoint an architectural committee makes their value in this deciding case moot.

Mr. Brooks Leahy, Esq. appeared on behalf of the neighboring Smith family whose lot directly adjoins the Dodson lot and would be closest to the proposed garage. Mr. Leahy submitted seven photographs of the Smith and Dodson lots, indicating the proximity of the proposed garage to the Smith residence and curtilage area. The Smiths feel that they need all the space which the 40 foot setback requires because of noise issues from Mr. Dodson's cars, described as "muscle cars", and the Dodson children's use of off-road motorcycles. Mr. Leahy stated that in his conversation with Deputy Director Charles Zeleski at Environmental Health that Mr. Zeleski felt that there was adequate room in the rear yard of the Dodson property to accommodate both a garage and the septic system reserve areas since the lot is 2.02 acres in area. There was no discussion about whether setback variances would or would not be necessary if the garage were located elsewhere on the lot.

Mr. Leahy also entered a copy of the decision in *Cromwell v. Ward, 102 MD. App. 691, 651 A.2d 424 (1995)* as interpreted by Stanley Abrams in *Guide to Maryland Zoning Decisions.* This case has been previously recognized by the Zoning Administrator as the fundamental case law on the issue of variances. This case cites the fundamental two-prong requirement for variances in Maryland – that the property whereon structures are to be placed is unique and unusual in a manner different from the nature of the surrounding properties and that an unreasonable hardship (or practical difficulty) resulting from the disproportionate impact of the ordinance [the setback requirement] caused by the property's uniqueness exists. Both prongs of the test must pass muster and a self-created hardship is never considered grounds for a variance.

Mr. Leahy argued that the Dodson property is relatively level and not unique from neighboring properties; that the garage could be located to the rear of the home so that denial of the variance would not constitute a hardship.

The message from the three neighbors attending the hearing is that they do not want the noise, odors and fumes from the Dodson cars and ATV's any closer to their properties. In that, I believe that there are concerns for neighbor Smith's property values if the variance were granted. Much of the criteria in § 223-191 of the County Code indicates that these factors and others outlined at the beginning of this decision are reasons to deny the variance.

While it is the Zoning Administrator's belief that property owners should generally be allowed as much reasonable use of their land as practical, in this instance he must consider the *Cromwell v Ward* decision as it applies to this case. Since there is already an existing three car garage on the home and the possibility exists for locating another garage elsewhere on the lot, a hardship is not encountered. Having visited the Brigadoon subdivision prior to hearing this case, the Zoning Administrator cannot state that the Dodson lot is unique from others there; however, locating a detached garage so close to the property line would be out of character with the other residences in that community.

7 November 2005

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 contest the Zoning Administrator's decision.