Tax Map/Block/Parcel
No. 59-8-1061

Building Permit/Zoning
Certificate No. 06-0551

Case 5200

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPELLANT: John and Carol Tyssowski
2210 Yellow Pine Drive
Finksburg, MD 21048

ATTORNEY: Isaac Menasche

REQUEST: Appeal a decision by the Zoning Administrator granting a variance from the required side yard setback of 50 ft. to 35 ft. for the construction of a garage.

LOCATION: The site is located at 2200 Yellow Pine Drive, Finksburg, on property zoned "C" Conservation District in Election District 4.

BASIS: Code of Public Local Laws and Ordinances, Section 223-37 and 223-182 (A) (C)

HEARING HELD: April 20, 2006

FINDINGS AND CONCLUSION

On April 20, 2006, the Board of Zoning Appeals (the Board) convened to hear an appeal of a decision by the Zoning Administrator granting a variance to Robert and Kristine Ozgar from the required side yard setback to 50 ft. to 35 ft. for the construction of a garage.

The Appellants appeared for the hearing. The Ozgars were granted a variance by the Zoning Administrator on February 8, 2006, which was the subject of the appeal. The Ozgars advised the Board in advance that they would not be participating in the Board's hearing on this matter.

Based on the failure of the Ozgars to present evidence in support of the variance, the Appeal was granted and the variance was denied.

5/17/06
Date

Jacob M. Yingling, Chairman

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Office of Zoning Administration
Neil M. Ridgely
Zoning Administrator

Notice of Decision

Case # ZA-987
Permit # 05-2778

Variance Request: For a variance from the required minimum setback of 50 feet to 35 feet for a garage at 2200 Yellow Pine Drive, Finksburg, MD, in Election District 04 by Kristine Ozgar.

Basis for Variance: § 103-54, § 223-35, § 223-37 and § 223-181 of the Carroll County Code of Public Local Laws and Ordinances.

Decision: Approved, with conditions.

Basis for Decision:
It is the opinion of the Zoning Administrator that approval of the variance request will not:

- Adversely affect the public health, safety, security, morals, or general welfare.
- Result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood.

In making this determination, the Zoning Administrator cannot answer in the affirmative to the 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 any effect from odors, dust, gas, smoke, fumes, vibrations, glare, and noise upon surrounding property values.

The applicant explained that she wishes to construct a two car, two story garage to expand the size of their home and provide additional space for their personal vehicles. The home site is constrained by the location of the septic system to the rear of the house, the wellto the immediate right of the driveway, and some existing wooded areas. The Department of Planning has waived the recorded 50 ft. Building Restriction Line for this project only. The Ozgars were joined by their contractor, Mr. Robin Ford, who testified that the Ozgars have tried their best to accommodate the neighbors concerns by shifting the face of the garage to minimize the visual impact yet still meet the requirements of the Beaver Creek development's Architectural Review committee.

Ms. Linda Hughes, 2160 Misty Meadow Ct., stated that the Beaver Creek Covenants require additions to be reviewed and approved by the Architectural Committee and that garages are not allowed to face towards the street; that only side entry garages are permitted in the community. Mr. Ford stated that the Ozgar design had been approved by the Architectural Committee.

Mr. Bill Seabrease, 2139 Long Forest Dr. questioned whether the addition would be used to operate a business from. Ms. Ozgar answered that it would not, that the purpose was associated only with the residential use of the property.

John and Carol Tyssowski, adjoining property owners at 2210 Yellow Pine Drive, appeared in

opposition to the project. They cited a report from Tri-state Appraisal service stating that the Ozgar's garage might have a negative impact on the Tyssowski's property values. They were largely concerned that construction of the Ozgar garage would obstruct their wooded view across the Ozgar property. They believe that some small trees will have to be removed to accommodate construction and that additional paving will be necessary. Ms. Tyssowski cited concerns that the addition would be used for Kris' Creations, since they had on occasion received misplaced deliveries for Ms. Ozgar's business.

Mr. Ford stated that they really only need a variance to allow for the new construction to come within only 38 feet of the property line, rather that the requested 35 feet. He feels that the Ozgar property is unique in that it is a panhandle lot with severe site restriction. Regarding practical hardship, the Ozgars feel that they are entitled to use of their property and that they have tried to cooperate with neighbors concerns and minimizing the impact to the view across their property.

Decision:
This variance is granted with the following condition:

- The garage – addition cannot be used to support a business operation beyond that which is allowed in the Carroll County Code of Public Laws and Ordinances as an accessory use for a "Home Occupation".
- The variance is restricted to a distance no greater than 35 feet from the property line.

For purposes of clarification, "Home Occupations" are allowed in the Conservation Zone at §223-35 C of the County Code. Home Occupations are defined in § 223-2 of the County Code as, "Any use of a dwelling, conducted solely by a resident, or use of any accessory building which is subordinate to the main use of the principal building for dwelling purposes, provided that the use:

1. Utilizes space equal to not more than 500 square feet
2. Does not generate vehicular parking or non-residential traffic to a greater extent than would normally result from residential occupancy.
3. Does not involve the sale of goods in the same form as purchased; and
4. Involves no evidence from the outside of the dwelling to indicate it is being used for anything other than residential purposes, other than a sign not exceeding one foot by two feet.

I do not feel the evidence that Ms. Ozgar's business may use this address to be so compelling as to rule against the variance. The addition will be attractive and in keeping with the existing facades of the residence; it has received approval of the development's Architectural Review committee. Four and five car garages are not uncommon in the Beaver Creek Estates development. The lot constraints do limit the size and placement of the addition. While I understand the neighbors concern with the partial obstruction of their view across the property, I do not believe it is devastating, nor do I feel that an attractive addition to the Ozgar residence will detract from neighborhood property values. Similar additions have been permitted in the Beaver Creek Estates subdivision, thereby establishing an inequitable hardship on the Ozgars were they not allowed a similar addition on their property.

8 February 2006

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.