

IN RE: PETITION FOR VARIANCE

(16 Dutton Avenue)

1st Election District

1st Council District

Honor A. Walesby

Legal Owner/Petitioner

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BEFORE THE

OFFICE OF ADMINISTRATIVE

HEARINGS OF

BALTIMORE COUNTY

CASE NO. 2021-0018-A

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by Honor A. Walesby for property located at 16 Dutton Avenue. The Petitioner is requesting variance relief from Baltimore County Zoning Regulations (“BCZR”) § 400.3 to permit a building height of 19 ft. in lieu of the maximum permitted 15 ft. For such other and further relief as may be required by the Administrative Law Judge (“ALJ”) Baltimore County.

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. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”). They did not oppose the requested relief.

The Petitioner, Honor A. Walesby appeared at the hearing. Lawrence Schmidt, Esq. represented the Petitioner at the hearing. Several neighbors also appeared and voiced their opposition to the requested relief. The subject property consists of three adjacent parcels which, combined, are approximately 15,000 sq. feet. It is zoned DR 2. Mr. Schmidt explained that there was an existing two story garage in approximately the same location as the proposed structure. This structure was recently razed. Mr. Schmidt further explained that the subject site is a long rectangle. The existing driveway is accessed via a shared private driveway that is the sole ingress

and egress for several newer homes on panhandle driveways. Elevations of the proposed garage structure were admitted as Petitioner's Exhibit 5. These elevations show a two story structure with a gambrel roof. Mr. Schmidt explained that it is a pre-fabricate structure that will be erected on-site on a poured concrete slab and that this construction will take only a couple days. It will therefore not burden or inconvenience the neighbors. Dr. Walesby testified that she plans to use the garage to store her vehicles on the first floor and her kayaks and other sporting equipment on the second floor. She testified that she will not use the structure for commercial or residential purposes. The structure will not contain any kitchen or bath facilities. Mr. Schmidt explained that the property has a significant grade change from front to back and that it also slopes toward the driveway. As a result of these slopes the proposed structure is designed to have a smaller footprint and more height. He noted that the visual impact of the additional four feet of height will be mitigated by the downward slope of the property.

The neighbors object to the height variance, claiming that it will impact their views. It became clear at the hearing that there is animosity between the petitioner and the neighbors. One of the neighbors, Alice Dorshow, submitted a legal document purporting to restrict Dr. Walesby's use of the driveway to the first 150 feet from Dutton Avenue. (Protestant's Exhibit 1). Ms. Dorshow noted that the proposed garage is substantially more than 150 feet off of Dutton Avenue and Ms. Dorshow therefore questioned how Dr. Walesby intended to access the garage. As Mr. Schmidt pointed out, that question is not at issue in this petition for a height variance.

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 explained, the property is unique within the legal sense of the word due to its slopes. It is also different in shape than the surrounding properties. In addition it is accessed via a shared private driveway. The slopes of the property would make it impractical to construct a wider, shorter structure. The petitioner would suffer practical difficulty if the variance were denied because she would be unable to build the proposed garage. The architecture of the proposed garage is compatible with the existing dwelling and with the neighborhood. I find that this modest height variance can be granted within the spirit and intent of the BCZR and without harming the public health, safety, or welfare.

THEREFORE, IT IS ORDERED, this **8th** day of **April 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR § 400.3 to permit a building height of 19 ft. in lieu of the maximum permitted 15 ft. For such other and further relief as may be required by the Administrative Law Judge (“ALJ”) Baltimore County is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is 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, Petitioner would be required to return the subject property to its original condition.
- Petitioner or subsequent owners shall not convert the garage into a dwelling unit or apartment. The proposed garage shall not contain any sleeping quarters, living area, or kitchen or bathroom facilities.
- The proposed garage shall not be used for commercial purposes.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed _____
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/dlm