

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(1933 Bulls Sawmill Road)	*	OFFICE OF
3rd Election District		
6th Council District	*	ADMINISTRATIVE HEARINGS
Elizabeth Anne Martin & Wayne		
Allen Thompson	*	FOR BALTIMORE COUNTY
Legal Owners/Petitioners	*	Case No. 2020-0187-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing and Variance filed on behalf of Elizabeth Anne Martin and Wayne Allen Thompson, legal owners (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”), to permit a proposed accessory structure (garage) larger than the existing principal structure (single family dwelling). In addition, a Petition for Variance was filed pursuant to § 400.3 of the BCZR to permit a proposed accessory structure (garage) to have a height of 24.0 ft. in lieu of the maximum height required of 15 ft.

Due to COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted.

Elizabeth Anne Martin and Wayne Allen Thompson appeared in support of the requests. Bruce Doak from Bruce E. Doak Consulting, LLC assisted the Petitioners in presenting the case. The site plan that he prepared was marked and accepted into evidence as Petitioners’ Exhibit 1. Several neighboring property owners appeared in opposition. A Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”) and from the Department of Environmental Protection and Sustainability (“DEPS”). They did not oppose the requested relief, subject to proposed conditions.

The property is approximately 1.1 acres and is zoned RC 4, which is the watershed protection zone. Mr. Doak and Mr. Thompson explained that the proposed garage would be used to store and work on several antique tractors that Mr. Thompson owns, as well as a couple pickup trucks. The proposed structure is 2400 sq. ft. and 24 feet high. Mr. Thompson explained that this height is needed in order to get the tractors in and out of the structure and to accommodate a hydraulic lift that he would install in the future.

A neighbor, John Kosloski, testified that he is a hydrogeologic engineer. He expressed concerns about the runoff from this large garage structure because the wells in the area tap into what he termed an “unconfined aquifer,” meaning that rainwater is the sole source of their drinking water and the wells are easily subject to contamination. He also noted that the RC 4 zoning in this area is intended to protect Prettyboy Reservoir, and this addition of 2400 square feet of impervious surface is antithetical to that purpose. Mr. Doak acknowledged that the reservoir is approximately a mile away from the subject property. Other neighbors on the street expressed similar concerns, as well as their view that this commercial size garage is not compatible with the residential feel of the neighborhood. Letters and photos in opposition, were admitted into evidence as Protestant’s Exhibits 1- 4.

SPECIAL HEARING

Based on the record evidence I find that the special hearing relief cannot be granted within the spirit and intent of the BCZR. Specifically, a large free-standing garage that is more than twice the size of the residence is not compatible with the neighborhood, as evidenced by the photos submitted by the protestants. Further, this 2400 sq. ft. structure is incompatible with the RC 4 watershed protection zone. Finally, the unrebutted testimony of Mr. Kosloski, a

hydrogeologic engineer, is that this structure could impact the aquifer, especially if hydraulic fluids and/or petroleum based fluids were to escape from the structure.

VARIANCE

The general rule is that “the authority to grant a variance should be exercised sparingly and only under exceptional circumstances.” *Mueller v. People’s Counsel for Baltimore County*, 177 Md. App. 43, 71(2007). This is because “a variance is an authorization for that which is prohibited by a zoning ordinance.” *Cromwell v. Ward*, 102 Md. App. 691, 699 (1995). And because “citizens [of a given county or municipality] are entitled to strict enforcement of the existing zoning regulations.” *Salisbury Bd. Of Zoning Appeals v. Bounds*, 240 Md. 547, 555-56 (1965). Therefore, “[t]he burden is on the applicant to show facts to warrant a variance,” and “the specific need for the variance must be substantial and urgent and not merely for the convenience of the applicant.” *Mueller v. People’s Counsel for Baltimore County*, 177 Md. App. at 70.

Under BCZR Sec. 307, and Maryland common law, in order to be entitled to variance relief the Petitioners must satisfy a two-step legal analysis, 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 is what necessitates the requested variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, supra. Finally, “unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship.” *Mueller, supra*, 177 Md. App. at 70.

In the instant case the site plan shows that the subject lot is essentially identical to all the other lots in this residential development. Indeed it was conceded that there is nothing unique about the lot. The Petitioners therefore cannot satisfy the first prong of the legal analysis. Further,

even if I were to reach the second prong, the record evidence does not support a finding that Petitioners' need for this variance is "substantial and urgent." Rather, it shows that the variance request is "merely for the convenience of the applicant." *Mueller, supra*, 177 Md. App. at 70. While I certainly understand that it would be convenient for Mr. Thompson to be able to store and work on his tractors and trucks right on this property, the law does not allow me to grant his requested variance. To the contrary, the neighboring property owners are entitled to "strict enforcement of the existing zoning regulations." *Salisbury Bd. Of Zoning Appeals v. Bounds*, 240 Md. 547, 555-56 (1965). Finally, I do not believe this proposed 2400 sq. ft. of additional impervious surface area is compatible with the purposes of the RC 4 watershed protection zone, and could negatively impact the "unconfined aquifer" which supplies the neighborhood wells.

THEREFORE, IT IS ORDERED this 7th day of **December, 2020**, by this Administrative Law Judge, that the Petition for Special Hearing seeking relief pursuant to § 500.7 of the BCZR, to permit a proposed accessory structure (garage) larger than the existing principal structure (single family dwelling) is DENIED.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief pursuant to §400.3 of the BCZR to permit a proposed accessory structure (garage) to have a height of 24.0 ft. in lieu of the maximum height required of 15 ft. is hereby DENIED.

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