

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(8728 Oakleigh Road) *	OFFICE OF
9 th Election District	
5 th Council District *	ADMINISTRATIVE HEARINGS
Angely Bissessar & Haimwattie Bissessar	
Michel Bissessar *	FOR BALTIMORE COUNTY
<i>Legal Owners</i>	
	Case No. 2020-0196-SPHA
Petitioners *	
* * * * *	

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 Angely Bissessar, Michel Bissessar and Haimwattie Bissessar, legal owners (“Petitioners”) for the property located at 8728 Oakleigh Rd. (the “Property”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”), to permit an accessory structure larger than the principle structure under Zoning Commissioner Policy Manual (“ZCPM”), §400.1.E. In addition, a Petition for Variance was filed pursuant to BCZR, §307.1 seeking relief from BCZR, §400.3 to allow an accessory structure to be 22 ft. tall in lieu of the permitted 15 ft., and from BCZR, §400.1 to have the structure located in more than the one-third (1/3) of the lot in the street corner side of the Property furthest from the side street.

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. Petitioner Angely Bissessar appeared at the hearing along with Patrick Richardson, P.E. of Richardson Engineering, and LLC who prepared and sealed a red-lined site plan (the Site Plan”). (Pet. Ex. 1). There were several Protestants and interested persons in attendance.

Zoning Advisory Committee (“ZAC”) comments were received from both the Department of Planning (“DOP”) and the Department of Environmental, Protection and Sustainability (“DEPS”). Those agencies did not oppose the requested relief.

The Property is approximately 19,590 sq. ft. (.450 ac), consists of two lots (Lot 51 and 52) and is located on the corner of Oakleigh Road and Dunwoody Road (formerly known as Eddington Ave.). It is zoned density-residential (DR 5.5). The Property is located in an older residential neighborhood called Cromwood Community. The Petitioners have owned the Property for 7 years. The single-family home faces Oakleigh Road and measures 1,400 sq. ft. In the photos of rear of the Property, the remaining foundation walls of an old garage can be seen. The garage was constructed in or around 1960 and partially demolished in 2014. (Pet. Ex. 4).

As originally platted, the Property was a rectangle. With the construction of I-695, a triangular shaped piece on the western edge of the Property was taken by the State of Maryland. (Pet. Ex. 1, 2). Additionally, along the northern edge of the Property parallel to Dunwoody Road, a strip of the Property was taken for highway widening (the “Highway Widening boundary”). (Id.) As a result, the Property is now an irregularly shaped parcel and the rear of the Property abuts the I-695 sound barrier wall. (Pet. Exs. 3 and 5).

The initial Petition requested a 2,320 sq. ft. detached garage. After considering comments from some of the Protestants and/or neighbors, the Petitioner revised the Site Plan to reduce the size of the garage to 1,876 sq. ft. (Pet. Ex. 1). With the reduction in garage size, the northern setback line measured from the Highway Widening boundary line to the garage, increased from 12 ft to 20 ft. There is 40 ft. between the edge of Dunwoody Road and the garage. To comply

with BCZR, §400.1, the proposed garage is angled to fit into the corner of the Property farthest from Dunwoody Road. The driveway for the garage will be accessed from Dunwoody Road.

The Petitioners are requesting a garage which is 400 sf +/- larger than the residence because they own two (2) vehicles including a truck which is used in the Petitioners' management company (the "work truck"). The work truck has ladders on top of it. The Petitioners are also planning to buy either an RV or a boat with a trailer. Because of the height and size of these vehicles, the proposed variance relief from height regulations is 22 ft., in lieu of the maximum 15 ft. is also needed. In addition to the elongated and peculiar shape of the Property, Mr. Richardson added that the slope changes at the western and southern end of the Property. These slopes abut the I-695 barrier wall, which further impact both the size and shape of the proposed garage.

Ms. Bissessar testified that no business or commercial enterprise is being operated from the Property. The proposed height of the garage is necessary to accommodate the steep roof pitch designed to mirror the pitch of the house, adding to the residential architectural features. After conversations with the surrounding neighbors, she reduced the size of the garage. Mr. Richardson confirmed that no water or sewer will be extended to the garage. Denise Burnhardt, 1802 Rushley Rd. supported the garage, highlighting that 3 other homes have garages.

Several Protestants testified against the requested relief. Peter Mazza, 1815 Rushley Rd. was concerned about the height of the garage and the need for the pitched roof. Mr. Mazza testified that the neighborhood streets are narrow and in need of repair. Denise Carden, 1804 Rushley Rd. was concerned with the construction of bathroom facilities in the garage which could be used as a second home. She added that allowing this oversized garage is setting a precedent for the neighborhood.

Charles Sharpe, 8744 Oakleigh Rd., a member of the Board of Directors of Cromwood Coventry Community Association (the “Community Association”), voiced their concern that a business is being conducted out of the Property. (Prot. Cromwood Ex. 1, 3). Additionally, the group believes that the proposed garage driveway will increase of water runoff into a nearby stream. The Community Association also requests conditions in an Order to preclude the use of the garage as a dwelling unit or apartment; to prohibit separate and/or additional utility and electric meter connections to the garage; and to prohibit a separate and/or additional water and sewer connections to the garage. Mr. Sharpe provided photographs of the neighborhood streets and testified that the narrow streets are not conducive to the size of Petitioners’ work truck or an RV. (Prot. Cromwell, Ex. 2). Janice Jaskulski, 1802 Rushley Rd., Secretary of the Community Association testified that the community members signed a petition opposing the building size. (Prot. Cromwood Ex. 1, 3).

Sharon Opdyke, 8721 Oakleigh Rd., lives across from the Property. Ms. Opdyke is concerned about water runoff from the height of the new garage and driveway into a stream which leads into the Gunpowder. (Prot. Opdyke, Ex. 4, 5). The older garage did not have a pitched roof. Ms. Opdyke believes that the proposed use is commercial in nature. (Prot. Opdyke, Ex. 1). She provided photographs of other garages in the neighborhood which are single-car garages, not double car garages. (Prot. Opdyke Ex. 2, 3).

In response to the testimony of the Protestants, Mr. Richardson added that water from the Property drains onto I-695. He added that the request is within the spirit and intent of the BCZR.

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).

The irregular shape of this Property as depicted in the zoning map and aerial photo along with the steep slopes particularly at the rear corner, immediately abutting the State's sound barrier wall for I-695, makes this Property unique, particularly within the context of this established, built-out neighborhood. (Pet. Ex. 3, 5). As a result, the proposed garage configuration is driven by these physical peculiarities. I find that if a variance was not granted, the Petitioner would suffer a practical difficulty in not being able to build the garage and still comply with BCZR, §400.1.

Additionally, strict compliance with BCZR, §400.3 limiting the height of the proposed garage to 15 ft. would cause an undue hardship to the Petitioners in not being able to park their larger vehicles inside the garage. The new garage will replace the original garage in the same location. Importantly, I find, based on the evidence, that it would be in the best interests of the neighborhood to have the Petitioners' vehicles (whether a work vehicle, personal vehicle, RV or boat and trailer) out of view and inside a garage. While the photos of the Property show that the Petitioner's work truck is parked in the driveway, a garage will prevent parking a commercial vehicle on a public street in a residential zone in violation of BCC, §18-2-206(c). It is also in the best interests of the neighborhood to have a garage reflect the architectural features in this established neighborhood. As such, the roof pitch will mirror the residence here.

In this way, I find that given the special property conditions here, the request to have a detached garage which is 400 sf +/- larger than the residence under the ZCPM, §400.1.E is both reasonable and necessary. According to the SDAT record, the residence was constructed in 1954 and is a typical size for that era.

I also find that the testimony of the Protestants was informed and genuine. It is encouraging to see Protestants who are engaged and concerned about their neighborhood. Understandably, the Protestants should not have to monitor a property for alleged commercial activity and I am sympathetic to their plight. As a result, I find that, the concerns of the Protestants can be addressed in the conditions as set forth in the Order herein.

THEREFORE, IT IS ORDERED this **15th** day of **December, 2020**, by this Administrative Law Judge, that the Petition for Special Hearing seeking relief pursuant to § 400.1.E of the Zoning Commissioner's Policy Manual to have an accessory structure larger than the principal structure is hereby is GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance seeking relief pursuant to BCZR, § 400.3 to allow an accessory structure to be 22 ft. tall in lieu of the permitted 15 ft. and BCZR, § 400.1 to have it located in more than one-third (1/3) of the lot in the street corner side of the property furthest from the side street is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. 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 his 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.
2. The accessory structure shall not be used for residential purposes. The Petitioner and subsequent owners shall not convert the subject accessory structure into a dwelling unit or apartment. The structure shall not contain any sleeping quarters, living area, kitchen or bathroom facilities.
3. The accessory structure shall not be used for commercial purposes.
4. The accessory structure shall not have separate electric and/or utility meters or connections. The accessory structure shall not have separate water and/or sewer meters or connections.

5. Petitioner shall comply with each of the conditions set forth in the DOP comments dated September 2, 2020 which are attached hereto and incorporated herein.

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

Signed _____
MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm