

IN RE: PETITION FOR VARIANCE

(1321 Seneca Road)

15th Election District

6th Council District

Eliza Jamison

Legal Owner

Petitioner

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BEFORE THE

OFFICE OF ADMINISTRATIVE

HEARINGS FOR

BALTIMORE COUNTY

CASE NO. 2020-0197-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 Eliza Jamison (the “Petitioner”) for waterfront property located at 1321 S. Seneca Road (the “Property”). The Petitioner is requesting variance relief from: (1) Baltimore County Zoning Regulations (“BCZR”) §1A04.3.B.2 to allow a 23 ft. side yard setbacks in lieu of the required 50 ft. for a residence to be constructed; (2) from BCZR §400.1 to allow a pool on the waterfront side in lieu of the rear yard (street side); and (3) from BCZR, §400.3 to allow an accessory structure (shed) to be maximum height of 22 ft. in lieu of the permitted 15 ft. In addition, Petitioner requested relief from §400.1.d(2)(A) of the Zoning Commissioner’s Policy Manual (“ZCPM”) to allow an accessory building to be located 32.5 ft. from the street centerline in lieu of the minimum required 75 ft. from the street centerline for a double frontage lot.

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. Eliza Jamison, the legal owner, appeared in support of the Petition along with Patrick Richardson, Jr., P.E. of Richardson Engineering, LLC who prepared and sealed a red-lined site plan (the “Site Plan”). (Pet. Ex.1). Property owners on each side of the Property opposed the relief.

Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Environmental Protection and Sustainability (“DEPS”) which indicates that the subject property is located with the Chesapeake Bay Critical Area (“CBCA”). A ZAC comment was also received from the Department of Planning (“DOP”) which did not oppose the requested relief subject to proposed conditions.

The Property is vacant and fronts on Seneca Creek in the Bowleys Quarter area. It measures 1.01 acres +/- (44,070 sf) in gross area and consists of two (2) lots (Lots 232, 233). The Property is 100 ft. wide. It is zoned resource-conservation (RC 5). The Property is served by public water and sewer. An aerial photo of the Property and the neighboring homes are depicted. (Pet. Ex. 2). A record plat dated June 6, 1927 shows a series of narrow lots along the water including the Property. (Pet. Ex. 3).

Upon consideration of the DOP ZAC comment opposing the location of the 30x30 garage within 32.5 ft. from centerline of South Seneca Road in lieu of the minimum required 75 ft. from the street centerline for a double frontage lot [ZCPM, §400.1.d(2)(A)], Mr. Richardson amended the original Site Plan and relocated the garage such that it is now located 75 ft. from the centerline of the street. As a result, the Petitioner no longer needs relief from the ZCPM. Mr. Richardson added that the height of the garage at 22 ft. is still needed to park a boat inside. The garage is also set at an angle so that a boat trailer can be backed up into it.

Mr. Richardson opined that the side yard setbacks of 23 ft. (western side) and 24 ft. (eastern side) are needed due to narrow lot width. Regardless of where the house is located on the Property, the total width remains at 100 ft. If a variance is not granted, a home could not be built. Finally, as depicted on the Site Plan, Petitioner is also requesting that a pool be located on the waterfront side of the Property rather than in the rear. The aerial photo reflects other properties on this Seneca

Creek cove have pools in front yard.

Protestant Anthony Anderson, 1323 S. Seneca Road, lives in his home on the eastern side of the Property. In June of 2020, he purchased his home which was built in the 1960s. He opposes the location of the proposed residence on the property because it restricts his south-western view of Seneca Creek; he would still have a south-eastern view of Seneca Creek. Mr. Anderson testified that he was told by his real estate agent that a home on the Property must be built in line with his home and could not block his waterview. He was also opposed to the Petitioner having a pool in her front yard because, while he did not build his pool, he was told that a pool had to be built in a side yard.

Henry Olaya and Karen Ljunggren own the home at 1317 S. Seneca Rd. which is on the western side of the Property. Like Mr. Anderson's home, their home was built in the 1960s. They purchased it 4 years ago. Mr. Olaya and Ms. Ljunggren object to the location of the Petitioner's home because it will block their south-eastern waterfront view. Mr. Olaya clarified that their 180 degree view will be reduced to 90 degrees. Ms. Ljunggren also objected to the proposed side yard setbacks where any home would be built closer than 50 ft. of their home. Ms. Ljunggren added that a real estate agent told them that any home built on the Property had to be located 50 ft. from their home and could not block their view.

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 described above, the site is unique because it is long and narrow with a total width of

100 ft. The Property is not a perfect triangle as the south-eastern waterfront edge runs back toward S. Seneca Rd. Because the required side yard setbacks in BCZR, §1A04.3.B.2 are 50 ft. on each side, if that variance was not granted, the Petitioner would suffer a practical difficulty and unreasonable hardship in not being able to build any home. The DOP did not object to the setbacks. Accordingly, I will grant that variance.

While the position of the proposed home was an issue for the Protestants, it not an issue for which relief was requested. CBCA regulations permit construction of a home outside of the critical buffer area. The aerial photo reveals that some homes are built closer to the water and some are built closer to the street. (Pet. Ex.2). In this case, the home is proposed to be located 200 ft from the water and outside the buffer area as designated on the Site Plan. (Pet. Ex. 1).

With regard to the location of the pool on the waterfront side (front yard), the aerial photograph revealed that several properties along Seneca Creek have pools on the waterfront side. (Pet. 2). The DOP did not object to the pool location. Indeed, the placement of a pool on the waterfront side is within the spirit and intent of the BCZR and will not injure the public health, safety or general welfare because it is contained within a cove of the home footprint. As such, all activities with regard to the pool will not interfere with the neighbors' use or enjoyment of their homes. Accordingly, I will grant the variance for the pool.

Finally, with regard to the height variance for the proposed garage, the Petitioner is requesting seven (7) additional feet in order to park a boat and trailer inside. I find that, given the elongated size of the Property, the potential spots in the rear of the Property for a garage are limited. The Petitioner would suffer an unreasonable hardship if she were not able to park a boat/trailer inside a garage on a waterfront lot. The height of the garage is not excessive and therefore will not injure the public health, safety or general welfare.

THEREFORE, IT IS ORDERED, this 15th day of **December 2020**, by the Administrative Law Judge for Baltimore County, that the Petitions for Variance pursuant to the Baltimore County Zoning Regulations (“BCZR”) for relief from: (A) BCZR, §1A04.3.B.2 3 to allow 23 ft. and 24 ft. side yard setbacks for the proposed home in lieu of the required 50 ft.; (B) BCZR, §400.1 to allow a pool in the front yard on the waterfront property in lieu of the rear yard (street side); and (C) BCZR, §400.3 to allow an accessory structure to be maximum height of 22 ft. in lieu of the permitted 15 ft. are hereby GRANTED; and

IT IS FURTHER ORDERED, the Petition for Relief from Zoning Commissioner’s Policy Manual, §400.1.d(2)(A) to allow an accessory building to be located 32.5 ft. from the street centerline in lieu of the minimum required 75 ft. from the street centerline for a double frontage lot and is hereby DISMISSED AS MOOT.

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 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.
2. 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 and shall not be used for commercial purposes.
3. The Petitioner shall comply with the DEPS ZAC Comment dated September 14, 2020 which is 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