

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(Butler Road) *	OFFICE OF
4 th Election District	
3rd Council District *	ADMINISTRATIVE HEARINGS
RCG Revocable Trust	
<i>Legal Owner</i> *	FOR BALTIMORE COUNTY

Petitioner	Case No. 2020-0229-SPHA
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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 the RCG Revocable Trust, the Legal Owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to permit an accessory structure on the subject property without a principal structure. The Variance request was filed pursuant to BCZR §307.1 for relief from BCZR § 400.3 to permit an accessory structure of 49 feet in lieu of the prescribed maximum of 15 feet.

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 Petitioner’s Exhibit 1.

Substantive Zoning Advisory Committee (“ZAC”) comments were 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, which will be incorporated into the Order.

Ecko and Rudy Gay, appeared in support of the requested relief on behalf of the Trust. They were represented by Neil Lanzi, Esquire of Wright, Constable & Skeen, LLP. Bruce E. Doak, the licensed surveyor who prepared the site plan also appeared; as did Vincent Greene, the licensed

architect who prepared the architectural plans. Theaux Le Gardeur, an adjoining property owner appeared in opposition and also submitted a letter of opposition which he read into the record, and which was admitted as Protestant's Exhibit 1. Stephanie Greenberg, one of the other adjoining neighbors, testified in support of the Gays' requested relief. Several other interested persons attended.

PETITIONERS' CASE

The subject property consists of two separate parcels, with separate tax accounts. The Gays' residence is located on one 14.26 acre parcel and the proposed accessory structure is to be located on the other 9.903 acre parcel. Both are zoned RC 2. There are agricultural conservation easements with the Land Preservation Trust and with the Baltimore County Agricultural Land Preservation Advisory Board covering both parcels. (Petitioners' Exhibits 5A and 5B). Mr. Doak testified that he met several times with Wally Lippincott of the DOP to discuss the design and location of the proposed structure. He explained that the proposed site is the only feasible location because of the agricultural easements, the septic field of the principal residence, a flood plain area, and the "harsh topography" of the property. He testified that only a half-acre of the least productive section of crop land will be used. He further explained that the structure will be built into a slope like a traditional bank barn in order to lessen the visual impact on the adjoining properties, which are all relatively distant. Upon questioning from the undersigned, Doak testified that this proposed accessory structure is within the 2 acre envelope of the principal structure (as required by the agricultural easements), because the area delineated pictured by the lines surrounding both the residence and this proposed structure on the site plan are a combined 2 acres, and because both structures are served by a common driveway. He stated that the zoning review office and the DOP allow such configurations, which are accomplished

by drawing a “lasso” around the residence and the accessory structure. In addition, Doak testified that he obtained approval for the proposed structure from the Baltimore County Agricultural Advisory Board, as required by the conservation easements. This Agricultural Board approval was confirmed by the DOP in its ZAC comment, and the DOP does not oppose the requested relief. Finally, Doak testified that he also reviewed the project with Vicky Collins of the Land Preservation Trust, and with Theresa Moore of the Valleys Planning Council and that they do not oppose the requested relief.

The architect, Vincent Greene, testified next. He explained that the proposed structure is designed to look like a traditional barn and that it will be clad in gray materials simulating barn wood. The floor plans were admitted as Petitioners’ Exhibit 6A and 6B, and exterior elevations were admitted as Petitioners’ Exhibit 7 A-D, showing all sides of the structure. He explained that the visual impacts of the structure will be lessened by building it into the slope like a bank barn. He noted that the highest point of the structure faces the Gays’ residence and will not substantially impact any adjoining property owners. Finally, he explained that the height variance is needed in order to accommodate the basketball court, which is the main function of the structure, and which will be used by Rudy Gay, a professional basketball player, to train in the offseason.

Ms. Gay confirmed that the primary purpose of the proposed structure is for her husband’s training needs. The main level will house a weight room in addition to the basketball court. She explained that the structure will also be used for family recreation and as a garage for their vehicles and lawn maintenance equipment. A declaration of intended use was admitted as Petitioner’s Exhibit 9. This document will be incorporated into the Order and confirms, among other things, that the structure will not be used for residential or commercial purposes.

Finally, as noted above, Stephanie Greenberg testified in support of the Gays. She explained that she and her husband own the adjoining property closest to this proposed structure. She said that they have reviewed the plans and feel that it is a beautiful design that is compatible with the rural nature of the area.

THE OPPOSITION

Mr. Le Gardeur testified that he is opposed to the requested relief for several reasons, which he had previously laid out in a letter that he read into the record. (Protestant's Exhibit 1). He explained that his property lies directly southeast of the subject parcel. He has lived there since 2001. His primary concerns are the height of the structure – which he pointed out is a full 34 feet higher than the normal 15 foot height limit. He also expressed concern about the compatibility of this structure with the Worthington Valley Historical District. He pointed out that this property enjoys the benefits of the conservation easement and in his view the restrictions in the easements should therefore be strictly enforced. Finally, he also expressed concern about the impacts this additional impervious surface would have on McGill Run, a trout stream that runs through the property and then into Western Run, the Gunpowder River, and ultimately, Loch Raven reservoir.

Evelyn Cochran, the adjoining neighbor to the northeast, testified that she is “disturbed” by the proposed height of the structure but otherwise has no objections.

REBUTTAL EVIDENCE

In rebuttal Mr. Doak emphasized that the proposed structure will occupy only a tiny percentage of the crop land, and that this site was chosen in order to have the least possible impact on the agricultural uses of the property. He noted that this type of recreational structure is expressly permitted under both easements if approved by the County Agricultural Advisory

Board. He stressed that the petitioners had worked hard with the DOP to obtain their approval, which was based on the fact that the location and design of the structure will be compatible with the RC 2 zone. He again explained that due to the steep topography the proposed site will have very little visual impact on the surrounding neighbors, including Mr. Le Gardeur, whose home is quite distant and entirely screened by a large hill.

Rudy Gay testified that he and his wife purchased this property because of the rural nature of the area, and that they are committed to the agricultural uses imposed by the easements. He explained that this structure will only be used for his training and for other family activities. He further explained that they worked with the architect to design a barn-like structure so that it would blend with the surrounding area.

SPECIAL HEARING

Petitioners require special hearing relief in order to build this “accessory” structure on a lot with no principal structure. I note though that their residence is on the adjoining lot, and would be connected to this accessory structure by a common driveway, so there is a direct nexus between the two structures. There is, however, another wrinkle presented by the conservation easements. Specifically, Section III (B) of the County easement, and Section III (C) of the Land Preservation Trust easement both allow the construction of “necessary structures (for example: garage, well house, tennis court, and swimming pool) designed, constructed and utilized for the purpose of serving the principal residence, *so long as such structures are within a two (2) acre Envelope Surrounding the Residence.*” *Id.* (emphasis added). As explained above, Mr. Doak testified that the “lasso” approach he used in this site plan allows for this resulting amoeba-like 2 acre building envelope.

This “envelope” is not defined in the easement agreement. However, “building envelope” is defined in the RC 6 regulations as “the area on a lot within which all principal structures except sheds, wells, septic systems, stormwater management systems, driveways or fences are permitted to be built.” *See*, BCZR § 1A07.2. And in the “Development area and standards” regulations in the RC 6, RC 7, and RC 8 zones the “building envelope” is limited to 20,000 square feet. *See*, BCZR §§1A07.8.B.3, 1A08.6.B.3, 1A09.7.B.3. However, the RC 2 regulations do not define “building envelope” and do not contain the 20,000 sq. ft. limit. In fact, the RC 2 regulations make no mention of “building envelope.”

In my view this “lasso” method of determining the 2 acre “envelope” in this case is rather tortured. Mr. Doak acknowledged that, as the crow flies, the site of this proposed accessory structure is significantly more than 2 acres distant from the principal residence. However, neither the DOP nor the Agricultural Advisory Board has objected to the proposed location, or the amoeba-like “envelope” depicted on the site. I will therefore grant the special hearing relief because I find that the proposed barn-like structure is compatible with this rural setting and with the legislative purposed of the RC 2 zone. Further, if this structure were in fact a barn used for agricultural purposes it would not be subject to *any* height restrictions. *See*, BCZR §1A01.3.A, and BCZR § 300.1. In short, there are many structures this high in the RC 2 zones. While I am sympathetic to the neighbors’ concerns; because of the bank barn design, the steep topography and the substantial distances separating the adjoining properties, I do not believe the height variance will have a substantial impact. And I note that DEPS did not express any concerns about impacts on water quality, other than requesting a review of the septic proposal for this structure, which will be a condition of the Order. In sum, I find that the special hearing relief

can be granted within the spirit and intent of the BCZR, and without causing harm to the general health, safety, or welfare. ¹

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 detailed above, the property is unique in several respects. It is divided into two parcels, it is subject to agricultural conservation easements, there is a floodplain area in the middle of the property and the property has “harsh topography” in the form of steep slopes. It is these features that necessitate where the proposed structure must be sited. I find that the petitioners would suffer practical difficulty and hardship if the variance relief were denied because they would be unable to build the proposed structure – which Mr. Gay needs to support his professional career. Petitioners have already invested substantial resources on the architectural design of this structure, which seeks to minimize the impacts on the surrounding properties, and which is aesthetically attractive and compatible. Again, I find that the variance can be granted within the spirit and intent of the BCZR and without harm to the general health, safety and welfare.

¹ The construction and use of the proposed recreational structure on “Parcel 2” as depicted on the site plan will result in a common law merger of the two parcels. *See, Mueller v. People’s Counsel for Baltimore County*, 177 Md. App. 43, 94-101 (2007). However, a cursory review of the easements suggests that no further development would be permitted on either parcel regardless of this merger.

THEREFORE, IT IS ORDERED this 14th day of **January 2021**, by this Administrative Law Judge, that the Petition for Special Hearing to permit an accessory structure on the subject parcel without a principal structure is hereby GRANTED.

IT IS FURTHER ORDERED that the Petitioner for a Variance from BCZR § 400.3 to permit an accessory structure of 49 ft. in height in lieu of the prescribed 15 ft. in height 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.
- The conditions and restrictions on use set forth in Petitioner's Exhibit 9 are hereby incorporated and Exhibit 9 shall be filed along with this Order in the Baltimore County Land Records.
- Prior to the issuance of the necessary permits Petitioner shall comply with the DEPS ZAC comments, 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
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/dlm