

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(4012 Chestnut Road)	*	OFFICE OF
15th Election District		
6th Council District	*	ADMINISTRATIVE HEARINGS
Christopher J. Bowerman &		
Samantha L. Bowerman	*	FOR BALTIMORE COUNTY
Legal Owners		
Petitioners	*	Case No. 2021-0081-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 Christopher and Samantha Bowerman (the “Petitioners”) for the property located at 4012 Chestnut Rd., Middle River (the “Property”). The Special Hearing was filed to approve a lot created in 1921 (prior to September 2, 2003) that does not meet the minimum acreage requirement or does not meet the setback requirement of RC 5 per the Baltimore County Zoning Regulations (“BCZR”) §1A04.3.B.1.b. (1). Variance relief from the BCZR §400.3 to permit a proposed accessory structure (garage) with a height of 22 ft. in lieu of the maximum height of 15 ft.

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. Christopher Bowerman appeared at the hearing along with Bruce E. Doak of Bruce E. Doak Consulting, LLC, register property line surveyor, who prepared and sealed a site plan (the ‘Site Plan’). There were no Protestants or interested citizens.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Environmental Protection and Sustainability (“DEPS”) which indicates that the subject property

is located within the Chesapeake Bay Critical Area (“CBCA”). A ZAC comment was also received from the Department of Planning (“DOP”) which agency did not oppose the requested relief.

The Property is approximately 14,600 sf and is improved with a 2-story single family dwelling (1,500 sf) built in 1994, a second dwelling (720 sf), 2 sheds, a driveway and parking area. (Pet. Ex. 1, 2). The Property is zoned Rural Residential (RC 5). (Pet. Ex. 4). It is waterfront Property which fronts on Seneca Creek. (Pet. Ex. 1, 5). The main home is smaller than most in the neighborhood. There are mature trees and vegetation on the Property which Petitioners want to retain.

Mr. Doak explained that the Property was created in 1921 as Lot 21 as shown on Bowleys Quarter Plat No. 2. (Pet. Ex. 3). In the street view photos provided, the main home sits closer to the water whereas the second dwelling is close to Chestnut Rd. (Pet. Ex. 7A-7K). Other properties in the area also have 2 homes on a single lot because the subdivision pre-dates the BCZR. (Pet. Ex. 3). The lots in this neighborhood do not meet the current minimum acreage or setback requirements. The Property is 50 ft wide and approximately 170 ft. long but not equal on each side.

Petitioners desire to remove the second home (720 sf) and replace it with a detached garage (1,004 sf) with a height of 22 ft. The proposed garage, as depicted on the Site Plan, will have one overhead door (12 ft and 14 ft) and the other one (10 ft and 14 ft). The larger overhead door and additional height are needed to park Mr. Bowerman’s ‘Snap-On’ work truck which contains tools which he sells to mechanics to repair vehicles. The other overhead door is for his pick-up truck. There are no plans for special lighting for the garage but it will likely have security cameras and a motion sensor.

Mr. Bowerman stated that he was aware of the CBCA lot coverage requirements. As a result, part of the driveway is proposed to be removed. (Pet. Ex. 1). If lot coverage is still an issue

after removal of that driveway, the shed will also be removed. Neighbors provided letters of support of the Petition. (Pet. Exs. 8).

SPECIAL HEARING

A hearing to request special zoning relief is proper under BCZR, §500.7 as follows:

The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

"A request for special hearing is, in legal effect, a request for a declaratory judgment." *Antwerpen v. Baltimore County*, 163 Md. App. 194, 877 A.2d 1166, 1175 (2005). Based on the evidence, I find that the lot was created in 1921, prior to the establishment of the RC5 zone and the current minimum acreage and setback requirements. The Property is therefore grandfathered. I also find that the requested Special Hearing relief can be granted in strict harmony with the spirit and intent of the BCZR and without injury to the health, safety or general welfare, particularly in light of the support of the neighbors.

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).

The Property is unique based on its asymmetrical shape and its main dwelling which is smaller than other homes in the neighborhood. Due to its unique features, I find that the Petitioner would suffer a practical difficulty and unreasonable hardship if the proposed garage with a height of 22 ft. was not granted because the Petitioners would not be able to house the Snap-On work truck and its valuable contents and also avoid a Code Violation for parking a commercial vehicle in residential driveway. Given the presence of the second dwelling which will be removed and replaced with a new structure, I also find that the requested variance relief can be granted in strict harmony with the spirit and intent of the BCZR and without injury to the health, safety or general welfare, particularly in light of the support of the neighbors.

THEREFORE, IT IS ORDERED this ____day of **June 2021**, by this Administrative Law Judge that the Petition for Special Hearing to approve a lot created in 1921 (prior to September 2, 2003) that does not meet the minimum acreage requirement or does not meet the setback requirement of RC 5 per the BCZR § Section 1A04.3.B.1.b. (1) is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Variance from BCZR, §400.3 to permit a proposed accessory structure (garage) with a height of 22 ft. in lieu of the maximum height of 15 ft. is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are 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, Petitioners would be required to return the subject property to its original condition.
2. Petitioners must comply with the DOP and DEPS ZAC comments, a copy of which is attached hereto and made a part hereof.

3. Petitioner and subsequent owners shall not convert the garage into a dwelling unit or apartment. The proposed garage shall not contain any sleeping quarters, living area, kitchen facilities or bathrooms. The proposed garage shall not have a connection to water. The proposed garage shall connect to the existing line for the second home (to be removed).

4. 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.

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm