

IN RE: PETITION FOR VARIANCE

(3120 Caves Road)

4th Election District

2nd Council District

Kristen F. Finkelstein &

Brian E Finkelstein

Legal Owners/Petitioners

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BEFORE THE

OFFICE OF ADMINISTRATIVE

HEARINGS OF

BALTLIMORE COUNTY

CASE NO. 2020-0287-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 Kristen F. Finkelstein and Brian E. Finkelstein (the “Petitioners”) for property located at 3120 Caves Road (the “Property”). The Petitioners are requesting Variance relief to: (1) permit an accessory structure (pavilion) to have a height of 19 ft. in lieu of the maximum height of 15 ft. per the Baltimore County Zoning Regulations (“BCZR”) § 400.3; (2) permit an accessory structure (recreational sport court) to be located in the side and front yard in lieu of the required rear yard per section BCZR § 400.1; (3) permit an accessory structure (garden & potting shed) to be located in the side yard in lieu of the required rear yard per BCZR § 400.1; and (4) permit an accessory structure (sports shed) to be located in the front yard in lieu of the required rear yard per BCZR § 400.1.

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. The Petitioners appeared at the hearing along with Bruce E. Doak, registered surveyor, who prepared a site plan. (Pet. Ex. 1). Neighbor Carol Davis, 3114 Caves Rd. was in attendance. Teresa Moore, Executive Director of Valleys Planning Council (“VPC”) was also in attendance.

Zoning Advisory Committee (“ZAC”) comments were received from 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 located east of Garrison Forest Rd. and along the boundary between rural residential and the Caves Valley Agricultural Priority Preservation Area. The area is agricultural to the North and rural residential to the West, East and South. It is approximately 7.538 acres and is zoned RC2. (Pet. Ex. 2). The aerial photo shows this property is irregularly shaped. (Pet. Ex. 3). There is a gentle grade change from the southern end to the northern end. The rear yard slopes down on both sides and it contains several septic systems. (Pet. Exs. 1, 10).

Mr. Doak explained that the Petitioners are building a home on the Property. (Pet. Ex. 5A). He showed views of neighboring properties from the new home. (Pet. Ex. 4, 5B-5E). Ms. Davis’ home at 3114 Caves Rd. is the closest adjacent property at 400 ft. away and sits at a higher elevation. (Pet. Ex. 5C). There are existing trees between the Property and the Davis’ house and more will be planted. The adjacent neighbor to the north of the Property at 3200 Caves Rd. is 700 ft. away and it also sits at a higher elevation. (Pet. Ex. 5D). The neighbor to the south west addressed as 3206 Caves Rd. is 600 ft. away. (Pet. Ex. 5E).

Mr. Doak testified that the Property is part of a Land Preservation Trust Easement created in 2006. (Pet. Ex. 6). The Deed of Conservation Easement permits a residence to be built within a designated building envelope. The storm water management facilities on the western side is limited to the buildable area. The non-residential structures such as the sport court, pavilion, pool, pool house, and sheds do not need to be constructed in the building envelope. The elevations for the home indicate that the home is angled to make it fit within the building envelope. Mr. Doak indicated that the OZR considers both sides of the home to be the front. (Pet. Ex. 7A and 7B).

The proposal here is to construct a 1-story pavilion for the pool in the rear yard with a roof pitch which mirrors the roof pitch on the home. (Pet. Ex. 8). As a result, a variance is needed for a height of 19 ft. in lieu of the required 15 ft. The pavilion will have both storage and changing areas. In addition, the Petitioners seek 2 sheds (a potting shed) and a sports shed measuring 12x12 with a 15 ft. height. (Pet. Ex. 9). A sport court measuring 30x50 is also requested. The location of these sheds and sport court will be in both the side yard and front yard as a result of angled position of the house. The sport court is placed in a flat area so there is less grading.

Mr. Finkelstein testified that there is a master plan for landscaping which will add a substantial amount of trees and vegetation as depicted on that plan. (Pet. Ex. 10). The Petitioners planted many trees before construction. The plan includes a 2 ½ acre natural meadow. The topography lines on the landscaping plan show the slope in the rear of the Property. Toward that end, a rendering of the Property provided an accurate depiction of the Property with the requested accessory structures and landscaping. (Pet. Ex. 11).

Teresa Moore of VPC asked Mr. Finkelstein about the lighting for the basketball court. He verified that any light will be directed down toward the court and not toward the neighbor's houses.

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 set forth above, the Property has an irregular shape, is sloped in the rear yard to each side and the location of the septic fields cause a practical difficulty in not being able to construct the pavilion, sheds and sports court in the rear. To do so would result in substantial grading and

therefore, more environmental disturbance. The height of the pavilion is necessary to mirror the roof pitch of the house. The location of the sheds and sport court in the side and front yards as shown on the Site Plan is the only practical place. I find that the variances requested are in harmony with the spirit and intent of the BCZR and will not cause injury to the health, safety or general welfare of the neighbors, particularly in light of the lack of opposition.

THEREFORE, IT IS ORDERED, this 22nd day of **March 2021**, by the Administrative Law Judge for Baltimore County that the Petitioners are requesting Variance relief to:

- (1) permit an accessory structure (pavilion) to have a height of 19 ft. in lieu of the maximum height of 15 ft. per the Baltimore County Zoning Regulations (“BCZR”) § 400.3 in accordance with the Site Plan which is incorporated herein, be, and it is hereby **GRANTED**.
- (2) permit an accessory structure (recreational sport court) to be located in the side and front yard in accordance with the Site Plan which is incorporated herein, in lieu of the required rear yard per section BCZR § 400.1, be, and it is hereby **GRANTED**.
- (3) permit an accessory structure (garden & potting shed) to be located in the side yard in accordance with the Site Plan which is incorporated herein, in lieu of the required rear yard per BCZR § 400.1 be, and it is hereby **GRANTED**.
- (4) permit an accessory structure (sports shed) to be located in the front yard in accordance with the Site Plan which is incorporated herein, in lieu of the required rear yard per BCZR § 400.1 be, and it 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.

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

MEM/dlm