

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(1207 Providence Road)	*	OFFICE OF ADMINISTRATIVE
9th Election District	*	HEARINGS OF
3 rd Council District	*	BALTIMORE COUNTY
Mark Tosti	*	
Legal Owner	*	
Petitioner	*	CASE NO. 2021-0272-A
* * * * *		

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by the Petitioner, Mark Tosti (“Petitioner”) for the property located at 1207 Providence Rd. (the “Property”). Petitioner is requesting variance relief from the Baltimore County Zoning Regulations (“BCZR”), §1B02.3 (§ 202.3 of the 1955 Regulations) to permit a proposed dwelling addition (garage) with a side yard setback of 4 ft., in lieu of the required 20 ft. and a sum of side yard setbacks of 16 ft. in lieu of the required 50 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. Petitioner Mark A. Tosti did not appear at the hearing. Bruce E Doak of Bruce E. Doak Consulting, LLC appeared with a site plan which he prepared and sealed (the “Site Plan”). (Pet. Ex. 1). Pete Beyrodt, the builder of the proposed garage, also appeared. Adjacent property owner, John Bathon, 1205 Providence Rd. appeared and testified in opposition.

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

The Property is 0.575 acres +/- (25, 047 sf) and is improved with a 2-story dwelling built in or about 1957. (Pet. Ex. 2). A 1-car garage was built into the ground floor of the home. The Property was created as Lot 4 on the Plat of "Providence Acres" (PB 22, 40) in or about 1956. (Pet. Ex. 1). The neighborhood of Providence Acres consists of ½ acre rectangle lots with split level homes. It is zoned Density Residential (DR 1).

Mr. Doak explained that the Petitioner, who currently resides at another property, intends to move to the Property along with his 91-year old father to live in it. As a result, Petitioner desires to build an attached 1-story, 528 sf, 2-car garage on the western side of the Property where the existing attached garage is located. Mr. Doak added that it would be difficult for Petitioner's father to maneuver a vehicle into the existing garage due to the limited turning radius. The Site Plan indicates that paving in the driveway area will be added. However, as noted by DOP and the street view photographs submitted, the paving and a retaining wall have already been added. (Pet. Exs. 4B-4D). The paved driveway extends nearly to the Property line. (Pet. Ex. 4D). Petitioner also constructed a retaining wall along the driveway. (Pet. Ex. 4B).

Mr. Doak opined the Property is unique due to its severe slope in the rear which makes construction of a detached garage in that area not an option. Additionally, Mr. Doak indicated that if a garage was constructed in the rear yard, there is not sufficient room at the south western corner of the home and the Property line to enter or exit it. While acknowledging that other properties in the neighborhood have rear sloping yards, Mr. Doak opined that this Property has a more severe slope. The proposed attached garage in the side yard here would extend within 4 ft. of the western Property line.

Mr. Beyrodt testified that if a 1 ½ car garage was constructed, rather than a 2-car garage, it would be 16 ft. wide and would be 10 ft. from the Property line.

John Bathon testified that he is opposed to the construction of a garage in the side yard facing his home. Mr. Bathon confirmed that his home and the Petitioner's home have identical layouts; both are 4-bedroom, split level homes with 4 steps up and 4 steps down to a walkout basement. He stated that the Petitioner has rented the home since his purchase in 1998 which rental has resulted code violations. At one point, he said that the Petitioner put the Property on the market for sale. Mr. Bathon objects to construction of a garage because the setback is not great enough between the homes. From his viewpoint, his home sits downhill and he would be staring up at a wall of the garage.(Pet. Exs. 4I, 4J, 4K). Mr. Bathon testified that the Property has a flat area in the rear yard next to the home for a garage. (Pet. 4L). He said that there is a concrete patio in that area. He added that the Petitioner had recently removed trees from the side and rear of his Property.

DOP ZAC Comment indicated that DOP did not support the Petition absent a demonstration of an unreasonable hardship and requested explanation of the requested setback distance.

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 rectangular in shape as are the other lots in Providence Acres. On the lots On the Property's side of Providence Rd., the lots have rear yards with declining slopes; some are more sloped and some are less. This fact does not make the Property unique under *Cromwell*, *supra*. The Court in *Cromwell*, *supra*, emphasized that the 'uniqueness' element of a property in

Baltimore County must consist of a peculiar characteristic or unusual circumstance relating only and uniquely to the Property at issue, different and apart other properties in the neighborhood. Accordingly, in this case, I find that the Property is not ‘unique’ for zoning purposes, based on the evidence presented.

In the event that the Property is found to be unique, I find that neither the Petitioner nor the Property will suffer a practical difficulty or unreasonable hardship if the variance request is denied. First, an attached garage already exists in the home and therefore it can be used for its intended purpose. Second, the Property is being rented by tenants. Third, the rear yard photograph reflects, and Mr. Bathon’s testimony corroborates, that there is a flat area in the rear yard next to the house for an attached garage. (Pet. Ex. 4L). Fourth, the requested area variance is driven by the Petitioner’s desire to construct a 2-car garage on a Lot created in 1956 with limited side yard setbacks. *McLean v. Soley*, 270 Md. 208 (1973); *Trinity Assembly of God v. People’s Counsel*, 407 Md. 53 (2008). To prove practical difficulty for an area variance, the Petitioner must produce evidence to allow the following questions to be answered affirmatively:

1. Whether strict compliance with the requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
2. Whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Mclean at 214-215.

The law is clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell*, *supra*, Judge Cathell noted:

Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

Id. at 722. As applied here, the desire to construct another garage, much less a 2-car garage up to the Property line, is a self-imposed hardship created by the Petitioner.

I also find, based on Mr. Bathon's testimony that the requested variance relief cannot be granted in strict harmony with the spirit and intent of the BCZR and without injury to the health, safety or general welfare of Mr. Bathon and his Property. There is not sufficient space between the properties to construct an additional structure (even an attached one) in the proposed side yard. Mr. Bathon would be staring up a hill at a wall of the proposed garage. The required zoning setbacks for the DR 1 zone are designated to provide for the minimum amount of separation between homes and this request falls well short of the required setbacks.

THEREFORE, IT IS ORDERED, this 30th day of **December, 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR, §1B02.3, (§ 202.3 of the 1955 Regulations) to permit a proposed dwelling addition (garage) with a side yard setback of 4 ft., in lieu of the required 20 ft. and a sum of side yard setbacks of 16 ft. in lieu of the required 50 ft. is hereby **DENIED**.

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