

IN RE: PETITION FOR VARIANCE

(9200 Smith Avenue)

9th Election District

5th Council District

Jennifer Moyer &

Wayne McLaggan

Legal Owners

Petitioners

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BEFORE THE

OFFICE OF ADMINISTRATIVE

HEARINGS OF

BALTIMORE COUNTY

CASE NO. 2021-0111-A

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by the Petitioners, Jennifer Moyer & Wayne McLaggan (the “Petitioners”) for property located at 9200 Smith Avenue, Parkville (the “Property”). The Petitioners are requesting variance relief from the Baltimore County Zoning Regulations (“BCZR”) §1B02.3.C.1 to permit a side yard dwelling addition (existing accessory garage to be attached to dwelling) with a side street setback of 22 ft. in lieu of the required 40 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. Wayne McLaggan appeared in support of the Petition along with Derek Vaszil of DSV Contracting, who assisted with the hearing. A site plan had been prepared and sealed by a professional land surveyor, Charles S. Ruzicka, who did not appear at the hearing. (Pet. Ex. 2). There were no Protestants or interested citizens who appeared at the hearing.

Zoning Advisory Committee (“ZAC”) comment was received from the Department of Environmental Protection and Sustainability (“DEPS”) and from the Department of Planning (“DOP”) which agencies did not oppose the requested relief.

Mr. Vaszil proffered that the Property is approximately 0.62 acres +/- (27,007 sf) and is zoned Density- Residential (DR 2). Using the Site Plan, Mr. Vaszil explained that he has obtained building permits to construct the side additions (east and west) onto the existing one-story frame and vinyl house which measures 1,169 sf +/- . However, he also needs to attach the existing house to the existing garage to create a first floor bedroom and to add part of a bathroom into the new connection. (Pet. Ex. 2). Because the existing garage becomes part of the house, the requested relief concerns the southeast corner of the existing garage which is not set back the required 40 ft. from Smith Avenue. The renovated home will be used by the Petitioner's parents who are no longer able to use stairs. Proposed plans of the interior renovations was helpful. (Pet. Ex. 1).

Mr. Vaszil testified that the Property has a unique shape from other properties along Smith Avenue which are square. The Property is not square; the south eastern corner is cut-off. It is a corner lot which fronts on Smith Avenue on two (2) sides. The home was built in or about 1943. In order to put all rooms on the first floor for the occupants who are elderly, the variance is needed. Mr. Vaszil testified that the Petitioners would suffer a practical difficulty if the existing garage could not be converted into a bedroom because only 2 bedrooms are permitted, and there is no other place to put it without building a second floor.

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 due to its peculiar shape. I find that the Petitioner would suffer a practical difficulty and unreasonable hardship if the proposed setback was not granted because the existing garage and new connection to the house could not be converted into a bedroom and bathroom, respectively, for an elderly couple who is unable to use the stairs. 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 lack of opposition.

THEREFORE, IT IS ORDERED, this 21st day of **July 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR §1B02.3.C.1 to permit a side yard dwelling addition (existing accessory garage to be attached to dwelling) with a side street setback of 22 ft. in lieu of the required 40 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 DEPS ZAC comment, a copy of which is attached hereto and make a part thereof.

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