

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(5706 Emory Road)	*	OFFICE OF ADMINISTRATIVE
4th Election District	*	HEARINGS OF
3 rd Council District	*	BALTIMORE COUNTY
Jennifer Estrada	*	
Legal Owner	*	
Petitioner	*	CASE NO. 2021-0202-A
* * * * *		

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by Jennifer Estrada (the “Petitioner”) for property located at 5706 Emory Road (the “Property”). The Petitioner is requesting variance relief from the Baltimore County Zoning Regulations (“BCZR”), §§ 400.1 and 400.3 to approve an accessory building (barn) in side left yard in lieu of the required rear yard only with a total height of 22.6 ft. in lieu of the required maximum height of 15 ft.

This matter was originally filed as an Administrative Variance, with a closing date of August 9, 2021. On August 5, 2021, Mark & Vera Rosenthal, 5708 Emory Rd. filed a formal demand for a hearing. 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, Jennifer Estrada, appeared in support of the requested relief. Mark Rosenthal testified in opposition along with neighbor, Jim Cooke, 5700 Emory Rd.

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

The Property is located on 5 acres +/- and is improved with home built in 1983; a pool in

the rear yard; a shed, an open air structure and a chicken coop in the rear yard; as well as a vegetable garden. (Pet. Ex. 11). It is zoned Resource Conservation, Agricultural (RC2).

Petitioner testified that she desires to construct a 36x56, 16 ft. tall, pole barn with a concrete slab in the side yard of her Property. (Pet. Ex. 1). A site plan showing the home, shed, and open air structure and proposed pole barn was submitted (the "Site Plan"). (Pet. Ex. 2). Street view photographs were provided and also show a white fenced-in area which Petitioner indicated is for a horse. (Pet. Exs. 2-9). Petitioner explained that she did not want the pole barn in the rear yard because she does not want to move the fence.

Petitioner explained that she is seeking additional height on the pole barn to accommodate dirt bikes, ATVs as well as a horse trailer which she is looking to purchase. She indicated that the horse trailer she wants to buy ranges in height from 8 ft. to 11 ft. tall and therefore the garage doors on the pole barn would need to be between 12-16 ft. tall. She stated that her builder told her that the height of the garage doors in turn generates a total height for the pole barn of 22 ft. She added that standard garage doors are 7-8 ft. tall and that even if these were installed, the height of the pole barn would still be 18 ft. Additionally, she does not want the pole barn in the rear yard because driving the horse trailer into the rear yard will ruin the grass, particularly when it rains.

Petitioner also answered questions from the undersigned in regard to photographs contained in the file showing a commercial van as well as the six (6) other vehicles parked next to the van. (Pet. Exs. 12, 13). Petitioner responded that her husband has a painting company and that four (4) of those vehicles belong to his workers who parked there and leave to do painting jobs. Petitioner also admitted that the business address listed with SDAT for Estrada Brothers, LLC is this Property.

Testifying first in opposition was Dr. Mark Rosenthal. He provided a street view of the proposed area for the pole barn which is next to the entrance to his property. (Prot. Rosenthal Ex. 1). He also provided aerial views of the Petitioner's Property to show that, of the total 5 acres, Petitioner has a large area in the rear of the Property to place the pole barn. (Prot. Rosenthal Exs. 2, 3). Dr. Rosenthal also testified that the Petitioner's fence was installed 2 years ago and that, she should have coordinated the simultaneous construction in the rear yard of both the pole barn and the fence. He added that, if the pole barn were constructed in the rear yard, the Petitioner would only have to remove part of the fence, not the entire fence.

Dr. Rosenthal also testified that the height and size of the proposed pole barn is a massive structure that is out of character with the neighborhood. He stated that the Petitioner has several small horses which do not necessitate an 11 ft. high trailer and horse trailers are parked outside; there is no need to weather-proof a horse trailer. He added that the proposed pole barn size and location will negatively affect his property value. In regard to workers of the painting business, Dr. Rosenthal testified that the workers park on Petitioner's Property and that, in addition to the commercial van, a large red truck comes to the Property to pick up the workers.

Also testifying in opposition was Jim Cooke whose property is also adjacent to the Petitioner's Property. Mr. Cooke testified that he is opposed to the height, size and the location of the proposed pole barn. He added that any pole barns in the neighborhood are located in the rear yards and that permitting the same would be an eye sore which would be visible from his Property. He opined that, if granted, his property value would decrease.

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 odd shape. However, the practical difficulty alleged by the Petitioner (i.e. that the fence must be moved and the grass will be muddy) is not the type of practical difficulty required by case law or under the requirements of BCZR, §307.1. *Montgomery County v. Rotwein*, 169 Md. App. 716, 906 A.2d 959 (2006). *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). I also find that the proposed height and size are not consistent with the alleged need to store ATVs, dirt bikes or a horse trailer which is yet to be purchased. Rather, based on the photographs of the employees' vehicles who are parked there, the commercial van and large red truck which (according to Dr. Rosenthal, picks up employees from the Property every day) as well as the admission by the Petitioner of the business operation which is being operated from the Property, the circumstantial evidence leads to the conclusion that the size and height of the pole barn are related to its use in the painting business. I also find that the proposed location for the pole barn is not only in the side yard but also in the front yard which relief was not requested in the Petition. It appears to me that the Petitioner's aversion to the pole barn in the rear yard is actually related to workers' vehicles and/or commercial vehicles driving through the grass to park in the pole barn.

Based on the photographs, I find that there is more than enough area in the rear yard to erect a pole barn. Petitioner can still make reasonable use of her Property as a 'home' without the granting of the requested variance. Any alleged hardship with regard to the rear yard is self-imposed. Petitioner constructed an in-ground pool and fence rather than, and/or without planning for, the desired pole barn. (Pet. Ex. 11). Moreover, 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.

Cromwell, at 722.

I also find that the requested variance relief cannot be granted in strict harmony with the spirit and intent of the BCZR, without injury to the health, safety or general welfare, particularly Dr. Rosenthal and Mr. Cooke's properties.

For the reasons stated herein, the Petitioner has failed to prove that either the location or the height of the proposed pole barn is warranted and therefore, the requested relief will be denied.

THEREFORE, IT IS ORDERED, this 3rd day of **November, 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR §§ 400.1 and 400.3 to approve an accessory building (barn) in side left yard in lieu of the required rear yard only with a total height of 22.6 ft. in lieu of the required maximum height of 15 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