

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(808 Dartmoor Road)		
8th Election District	*	OFFICE OF ADMINISTRATIVE
3 rd Council District		
Danielle Vaziri & Francis Bonadio, Jr.	*	HEARINGS OF
Legal Owners	*	BALTIMORE COUNTY
Petitioners	*	CASE NO. 2021-0215-A
* * * * *		

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by Danielle Vaziri and Francis Bonadio, Jr., (the “Petitioners”) for property located at 808 Dartmoor Road (the “Property”). The Petitioners are requesting variance relief from the Baltimore County Zoning Regulations (“BCZR”), §1B02.3.C.1 to permit a proposed dwelling addition (attached garage) with a side setback of 5 ft. in lieu of the required 10 ft.

This matter was originally filed as an Administrative Variance, with a closing date of August 16, 2021. On August 16, 2021, David Satterfield, 808 Dartmoor 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, with the public notice on the sign posting indicating that the hearing would be conducted virtually. The Petitioners appeared at the hearing. David M. Satterfield did not appear.

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

The Property is approximately 13,554 sf and is improved with a split-level home built in or about 1965. The Property was created on *Plat Two Meadowland* in or around June of 1964

which Plat includes other similarly sized yards and homes. (Pet. Ex. 11). The Property is enclosed with a wooden fence. (Pet. Exs. 1, 2, 6, 7, 8). It zoned DR 3.5. (Pet. Exs. 12A, 12B). Street view photographs of the Property were submitted. (Pet. Exs. 1-9).

Petitioners stated that they desire to construct an attached garage measuring 12x28 on the side of the house as shown on a site plan (the "Site Plan"). (Pet. Ex. 10). The garage is attached by only 8 ft. (*Id.*). They reasoned that, as shown in the photographs of the rear yard, they do not want to construct the detached garage in the rear yard because there is a tree which they believe would be negatively impacted and in particular the critical root zone of that tree. The photographs of the rear yard show a tree with a round, mulched area at its base, in which sits a table and chairs as well as a children's play area. The photograph of the side yard where Petitioner proposes to construct the garage shows a decline in grade next to Mr. Satterfield's property. (Pet. Ex. 6). No evidence was submitted in regard to whether the tree was a specimen tree and no expert testimony was provided in regard to a critical root zone.

It is the location of the proposed attached garage on the side yard that requires variance relief from the side setback next to Mr. Satterfield's property. While the Site Plan and Affidavit filed for the Administrative Variance indicate that the Variance needed in one area is 0.3 ft., and in another 4.9 ft., the Petition requests a side yard setback of 5 ft. in lieu of the required 10 ft. Petitioners also argued that the other side of the house is next to a Forest Buffer so a garage cannot be constructed there. Upon inquiry, Petitioners indicate that no other properties in the neighborhood have side yard garages.

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 shown on the 1964 Plat and My Neighborhood Zoning Maps, I find that the Property is unique due to its irregular shape. (Pet. Exs. 11, 12). However, the practical difficulty alleged by the Petitioners (that the critical root zone of a tree is disturbed) was only speculation. The location of the attached garage is for the convenience of the Petitioners as moving the garage to the rear yard (such that it would become detached) would be closer to the mulched area which has a table, chairs and children's play area. The hardship is therefore self-imposed. 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). There was no evidence that the tree is a specimen tree which would require the approval of a Forest Conservation Variance prior to removal. There was no expert testimony in regard to the alleged critical root zone.

Petitioners can still make reasonable use of their Property without the granting of the requested variance and they can still construct a detached garage in their rear yard without a variance provided they meet the area setback and height regulations. 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.

While the requested setback may seem inconsequential in terms of the amount, the consequences to the peace and enjoyment of the Satterfield property, including the increased water

run-off from the garage down the slope and closer to his home, are not. There was no evidence provided of storm water management being installed, or the control of water flow away from the Satterfield property. As such, I 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 of Mr. Satterfield's property. Moreover, it is significant that there are no other properties in the neighborhood which have attached garages in the side yards other than those garages which were built as part of the home. The reason for the lack of side yard garages is that this is an older subdivision which does not have sufficient areas of separation between the homes as required under the current BCZR. In my view, granting such a variance will also have an adverse domino effect on this established neighborhood of homes with limited yard sizes.

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, §1B02.3.C.1 to permit a proposed dwelling addition (attached garage) with a side setback of 5 ft. in lieu of the required 10 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