

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(1118 Burke Road)	*	OFFICE OF ADMINISTRATIVE
15th Election District	*	HEARINGS OF
6th Council District	*	BALTIMORE COUNTY
Andrew Schreiber	*	CASE NO: 2021-0205-A
Legal Owner	*	
Petitioner	*	
* * * * *		

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by the Petitioner, Andrew Schreiber (“Petitioner”) for property located at 1118 Burke Road, Bowleys Quarters (the “Property”). The Petitioner is requesting Variance relief from the Baltimore County Zoning Regulations (“BCZR”) as follows:

- 1) BCZR, §1A04.3.B.2.b to allow a dwelling addition on the right side of the house with a minimum side yard setback of 7 ft. in lieu of the required 50 ft.
- 2) BCZR, §1A04.3.B.2.b and §301.1 to allow a proposed open deck with a side yard setback of 4 ft. in lieu of the required 37.5 ft.
- 3) BCZR, §1A04.3.B.3 to permit a building with a 25 percent lot coverage in lieu of the 15 percent maximum lot coverage.
- 4) BCZR, §1A04.3.A to allow a proposed dwelling on a lot zoned RC5 with a height of 40 ft. in lieu of the permitted 35 ft.
- 5) BCZR, §1A04.3.B.2.b to allow a proposed dwelling on a lot zoned RC5 with a street center-line setback of 56 ft. in lieu of the required 100 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. The Petitioner appeared at the hearing along with Mitchell Kellman. Timothy Kotroco, Esquire represented the Petitioner. Margaret Pratt and Steven Pratt, 1116 Burke Rd, attended the hearing in opposition (the “Protestants”) along with John Dowling, surveyor. Angela Tonello, Esquire represented the Protestants.

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

The Property is approximately 0.40 acres (17,665 sf) waterfront home and is improved with a 2-story, 528 sf ‘shorefront’ home on Galloway Creek. All of the living space is on the second floor of the home; the basement is unusable due to flooding. The Property is zoned Rural, Residential (RC5). An existing conditions site plan was submitted (the “Existing Conditions Site Plan”). (Pet. Ex. 1). The Petitioner testified that he is the sole owner of the Property. The approvals here are for an addition and renovation of the existing home which he needs to sell the Property. Previous potential buyers hired Site Rite Engineers to prepare and a site plan with the proposed improvements (“Proposed Improvements Site Plan”) (Pet. Ex. 1A). The initial buyers are no longer purchasing the Property but it is presently under contract for sale with new buyers.

Photographs of the Property from both street view and aerial view were provided. (Pet. Ex. 2-4). There is space behind the existing house for an addition and in the front for a deck. (Pet. Exs. 2, 2B and 3). A letter of support from the property owner of 1120 Burke Rd. and a photograph of that property were provided. (Pet. Exs. 2A, 5). However, the additions to the home are not long the property line with the supporting neighbor at 1120 Burke Rd.; rather the improvements are on the side facing the Pratt property at 1116 Burke Rd. Architectural renderings were also provided. (Pet. Ex. 8). Petitioner stated that the existing kitchen/living area is located on the side facing the Pratt property and therefore the option of adding onto the existing home, rather than removing it, was not economically viable. While the Proposed Improvements Site Plan indicates that the addition is 7 ft. from the Pratt property line and the proposed deck is 4 ft. from the Pratt property line, Petitioner testified that he would agree to move the deck to 7 ft. from the Pratt property line.

Mitchell Kellman, the Director of Zoning Services with Daft, McDune & Walker was admitted as an expert witness in BCZR and Baltimore County Development Regulations. Mr. Kellman is familiar with the Proposed Improvements Site Plan. In calculating the requested lot coverage of 25% in lieu of the existing 15% maximum lot coverage, Mr. Kellman opined that the entire size of the Property including the land underneath the water passed the bulk head is included. He also testified the Petitioner needs a 56 ft. setback to a street center-line in lieu of the required 100 ft. He added that the proposed improvements will also require a height variance of 40 ft in lieu of the permitted 35 ft. These variance requests were added to the Petition the day of the hearing. (See Amended Petition in file).

Mr. Kellman explained that the setback variances for the proposed addition of 7 ft. and deck of 4 ft. from the Pratt property is necessary because the Property cannot meet the 50 ft. RC5 required setbacks. He highlighted that if the addition is moved to the front or rear, setbacks variances will still be needed. Mr. Kellman opined that the Property is unique in that it is irregularly shaped – wider at the street and narrower at the waterfront. The existing 1920s home is not parallel to the street. He stated that strict compliance with the RC5 BZCR will cause a practical difficulty and unreasonable hardship because the Petitioner would not be able to rebuild/renovate the existing home. He opined that the variance relief here is within spirit and intent of the BCZR and will not be detrimental to the health, safety or general welfare. On cross examination, Mr. Kellman stated that 1116 is close to the Property line.

Margaret Pratt testified that she and her husband Steven Pratt have lived in their home for 8 years. She stated that it is the original shore home. Their deck, which is the front door to their home and was constructed 20 years ago +/- by the prior owner as shown by the deck permit, is close to the Property line. (Pet. Ex. 14). She provided photographs of her property. (Prot. Exs. 2-

8). Ms. Pratt testified that they are not opposed to a rebuild and/or renovation of Petitioner's home, but are opposed to the addition and deck within 7 ft. of the Property line. Ms. Pratt testified that the proposed addition and deck will intrude on her privacy which will force them to close their shades at all times, will increase water runoff, and will impede the ability of emergency services from access to her home. Ms. Pratt did not build a replacement dwelling on their property due to the RC5 setback restrictions. She emphasized that the Petitioner's request for approval is driven by his desire to sell the Property and the buyers desire to use the existing kitchen and living area.

John Dowling, licensed surveyor, was accept as an expert in surveying. He prepared a survey of the Pratt property. (Pet. Ex. 15). He opined that the Petitioner has space in both the front and rear of his Property for the addition and deck. Mr. Dowling referred to the 4 ft. distance from the proposed deck to the Pratt deck as a 'chokehold point.' In his opinion, other new homes are set back farther than 4 ft. He does not find that the Property is unique for this neighborhood and no practical difficulty exists as a lesser variance would be required if the addition were placed behind the home or on the side facing 1120 Burke Rd.

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).

I find that the Property is unique in that it is irregularly shaped in such a way that it is unlike any other properties in the area. It is also peculiar in that it has one of the smallest homes in the neighborhood as it is one of the original shore homes.

In regard to practical difficulty, I find that this factor has not been met. The Petitioner seeks approval for Proposed Improvements Site Plan in order to sell the Property. Petitioner was candid that whether he would retain the home for himself, or sell it to prospective buyers, there is a collective desire to construct the proposed addition and deck onto the Pratt side in order to use the existing kitchen and living room orientation. This will save buyers money on the rebuild/renovation. However, doing so is at the cost of the Protestants' use and enjoyment of their property due to the fact that the proposed addition and deck will be 7 ft. from the Property line (Petitioner having agreed that the deck would be changed from 4 ft. to 7ft). I find that by changing the Proposed Improvements Site Plan, the Petitioner can still make reasonable use of his Property and/or offer it for sale. The photographs reflect that there is ample space in the rear of the home for an addition, and in the front for a deck facing the water, thus reducing and/or eliminating any hardship on the Protestants.

I find that the alleged practical difficulty and/or hardships are self-imposed and are economically driven. 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. Moreover, the Court of Special Appeals in *Montgomery County v. Rotwein*, 176 Md. 716, 732-33 (2006) citing *Cromwell*, held that economic loss alone does not satisfy the 'practical difficulties' test:

Economic loss alone does not necessarily satisfy the 'practical difficulties' test because, as we have previously observed, 'every person requesting a variance can indicate some economic loss.' *Cromwell* at 715.....Indeed, to grant a variance application any time

economic loss is asserted, we have warned, 'would make a mockery of the zoning program.

I find that the owner of 1120 Burke Rd. is in support of the addition and deck because it is not on his side. Building an addition in the rear of the Property will more closely resemble the homes at 1116 and 1120 Burke Rd. thereby promoting the general welfare of the neighborhood. While variance relief may be required if the Proposed Improvements Site Plan are changed, it will infringe to a lesser degree on Protestants' property.

THEREFORE, IT IS ORDERED, this 12th day of **October, 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR:

- 1) BCZR, §1A04.3.B.2.b to allow a dwelling addition on the right side of the house with a minimum side yard setback of 7 ft. in lieu of the required 50 ft.
- 2) BCZR, §1A04.3.B.2.b and §301.1 to allow a proposed open deck with a side yard setback of 4 ft. in lieu of the required 37.5 ft.
- 3) BCZR, §1A04.3.B.3 to permit a building with a 25 percent lot coverage in lieu of the 15 percent maximum lot coverage.
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- 5) BCZR, §1A04.3.B.2.b to allow a proposed dwelling on a lot zoned RC5 with a street center-line setback of 56 ft. in lieu of the required 100 ft.

be, and they are hereby, **DENIED**.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm