

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(19608 Cameron Mill Road) *	OFFICE OF
7 th Election District *	ADMINISTRATIVE HEARINGS
3 rd Council District	
Troy M. & Kimberly J. Elser, *	FOR BALTIMORE COUNTY
<i>Legal Owners</i>	
Petitioners *	Case No. 2019-0415-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing and Variance filed on behalf of Troy M. & Kimberly J. Elser, legal owners (“Petitioners”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) for an amendment to the Final Development Plan (“FDP”) of Cameron Mill for the purpose of adjusting the lot lines of Lots 35, 36 and 53A. In addition, a Petition for Variance was filed pursuant to BCZR: (1) to allow an accessory building (existing garage) with a zero (0) foot rear yard setback in lieu of the minimum required 2 ½ feet; and (2) to allow an accessory building (existing garage) with a height of 16 ft. in lieu of the maximum allowed 15 feet, pursuant to § 400.3.

The property owners, Troy and Kimberly Elser, appeared in support of the requests. Professional Land Surveyor, Geoffrey Schultz, also appeared and a site plan was introduced through him and admitted as Petitioners’ Exhibit 7. Petitioners were represented by James H. West, Esquire. Their adjoining neighbors to the north, George Karavedas and Pamela Lehnert, husband and wife, appeared in opposition. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Environmental Protection and Sustainability (“DEPS”).

This case involves a large garage structure owned by the Petitioners that was partially built on three adjoining properties: lots 35, 36 and 48 of the Cameron Mill subdivision. Mr. Elser testified that he and his wife purchased the property in 2004 and that in 2008 they contracted with a builder to construct the garage in question. He testified that it was the builder's responsibility to submit all the plans and procure all the necessary permits when the garage was built. He testified that he and his wife believed that everything had been done properly and they believed the garage had been built entirely on their property. I note that the Elsers did not produce any plans or permits from the garage construction process; however, I take Mr. Elser at his word that they believed everything had been properly done by their builder.

Mr. Elser identified a series of aerial photographs that show the Elsers' home and garage and also show the home and property of their neighbors to the north, Ms. Lehnert and Mr. Karavedas. (Petitioners Exhibit 2). Elser then identified a series of photographs of the garage structure. (Petitioners' Exhibit 3). He then identified a letter from a Mr. Kenneth Kassmel, the owner of lot 36, one of the lots affected by the proposed lot line adjustment and Final Development Plan amendment. In this letter (Petitioners' Exhibit 4) Kassmel states that he has no objection to the lot line adjustment and amendment. Mr. Elser then identified a series of photographs (Petitioners' Exhibit 5) that show survey stakes and a string line that depict that portion of the garage that is currently built on lot 48, the property owned by Lehnert and Karavedas. He testified that if the variance relief is granted the Elsers will deconstruct and remove that portion of the garage that encroaches on lot 48. He further explained that he had been informed that if they removed more of that corner of the garage structure it would significantly impair its structural integrity, and this is why they are seeking a variance from the 2.5 foot rear lot line setback

requirement.¹ Mr. Elser testified that the property between his house and the Lehnert/Karavedas house (all owned by them) is heavily wooded and that he did not believe the garage structure was visible from his neighbors' house even during the winter months.

Mr. Schultz was accepted as an expert in surveying, zoning and development. His *curriculum vitae* was admitted as Petitioners' Exhibit 6. He testified about the unique topography of the Elser's lot, and particularly the steepness of the grade in the area where the garage is located. He testified that he was the principal designer of the original Cameron Mill development. He explained that most of the lots are 3 to 4 acres, as compared with the Elsers' lot, which is less than 2 acres. He testified that the requested lot line adjustment and Final Development Plan amendment would have no significant adverse impacts on the Cameron Mill development. In his opinion, the requested variance relief would have no negative impact on the public health, safety or welfare and would not conflict with the spirit and intent of the BCZR. He also believed that the variance relief was necessary in order to preserve the structural integrity of the garage. However, when questioned by Mr. Karavedas he acknowledged that he was not an architect or structural engineer.

Todd Getz, the owner of lot 35, then briefly testified and stated that he was in support of the requested relief and had no objection to the lot line adjustment and proposed amendment to the

¹ By letter dated October 24, 2019, Mr. West has asked that the Elsers be permitted to amend their Petition so as to request a “**one foot rear yard setback** in lieu of the minimum required 2 ½ feet (rather than the zero foot rear yard setback requested in the original Petition). This would allow for Ms. Lehnert and Mr. Karavedas to erect a fence along the rear boundary of the property, referenced in Ms. Lehnert's testimony, but would preserve as much of the existing garage as possible.” (emphasis in original). By email dated October 25, 2019 Mr. Karavedas opposed the amended request for variance relief, stating: “We have been made aware of the letter Mr. West sent requesting an amendment to the Petition for variance relief for the garage on the Elser property to change the request from a 0' setback to 1' setback. Mr. West reached out to us for our approval to which we responded we are not in favor. As we are not familiar of the legal aspects we are puzzled by this action and want to make it clear that we do not support this request.” This letter and email will be made a part of the record.

Final Development Plan. Donald Russell, the President of the Cameron Mill Homeowners Association testified that he was appearing on behalf of the HOA simply to insure that any amendment to the Final Development Plan would be properly documented and recorded in the County Land Records.

Mr. Karavedas then submitted a series of photographs of the portion of their property that has been infringed by the Elser's garage, and by various other encroachments by the Elsers, including underground electrical lines, landscape lighting, and a makeshift fire pit. (Protestants' Exhibits 1-6). Ms. Lehnert testified that the Elsers have been using this portion of her and her husband's property without their knowledge or consent. She testified that the fire pit is 79 feet inside their property and that the landscape lighting is over 100 feet inside.

The property line issue arose when Lehnert and Karavedas had a property line survey done in preparation for building a structure on their property. They needed to know the exact property boundary so that they could calculate the proper setbacks for this structure. Ms. Lehnert explained that they had initially been willing to try to work with the Elsers on a lot line adjustment on their property like that the Elsers' other neighbors have agreed to. However, she explained that her mortgage company objected and that they would have had to go through a formal application process with the mortgage company that would cost \$500 just to initiate. She also testified that she was concerned about being fined by the County for any disturbances the Elsers had made in the forest buffer easements – specifically the aforementioned wiring, lights and fire pit, as well as some playground equipment.² Ms. Lehnert explained that they did not have a big problem with the

² The Protestants submitted an email they had received from Troy Elser in which he forwarded an email he had received from his former attorney, Lawrence Schmidt. (Protestants' Exhibit 7). This email explains Mr. Schmidt's efforts in obtaining a forest buffer variance for a shed, play set, and tree house that the Elsers had constructed on property within lots 35, 36, and 47, which would all be within lot 53A (the Elser's lot) if the requested lot line adjustment is granted.

one foot height variance the Elsers are requesting but that they are opposed to the requested zero setback from her property line because she and her husband want to build a fence along that property border to prevent future encroachments, and they do not want to have to build it right on top of the Elsers' garage. She also questioned how the Elsers would maintain the back of the garage if there was no setback. Understandably, Ms. Lehnert also stated that she wants the Elsers to remove all the underground wiring and the landscape lighting that they have installed on her property. She stated that they don't really object to the Elsers leaving the fire pit because it is really just a circle of stones. Finally, she stated that they do not object to the requested height variance on the garage.

In response to this testimony from Mr. Karavedas and Ms. Lehnert, Troy Elser testified that he had not intentionally trespassed on their property and that prior to the above-referenced property line survey he had believed his property went up past the large pine tree shown in Protestants' Exhibit 5. He did not offer any explanation for why he believed his property extended this far north. He confirmed that he would remove all the wiring and lighting.

SPECIAL HEARING

The Elser's neighbors who own lots 35 and 36 have no objection to the requested lot line adjustments and concurrent amendment to the Final Development Plan. The HOA has no objection either, as long as the amendment is properly documented and recorded. Ms. Lehnert

Attached to Mr. West's letter of October 24 (referenced in footnote 1) is a letter dated October 5, 2019 from Thomas Krispin to Mr. Schmidt. Mr Krispin, the Supervisor of the County's Environmental Impact Review section states in this letter that "while the shed, play set, and tree house are within the existing forest buffer easement, they are covered under a previously approved forest buffer variance, and will not have to be removed." The letters from Mr. West and Mr. Krispin will be made a part of the record.

and Mr. Karavedas did not voice any objection to this either as it does not affect them. I will therefore grant this requested relief.

VARIANCE

Under Section 307 of the BCZR, and under Maryland common law, the request for a zoning variance must satisfy a two-pronged analysis, 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). Even if both these prongs are met the variance must still not conflict with the spirit and intent of the BCZR.

Both Mr. Schultz and Mr. Elser described the asymmetrical dimensions of the Elsers' property as well as the steep topography. They also explained that is a smaller lot than the others in the development. Although these features make the property somewhat unique, they are not the reason the variance is necessary. Both the rear lot line setback variance and the height variance are needed only because the garage was constructed in violation of the BCZR. With respect to the question of hardship, I agree with Ms. Lehnert, that if the Elsers – or their builder – had properly determined their property boundaries when they built the garage then they would not need the setback variance relief they are now seeking. In sum, this is a self-imposed hardship and, as such, variance relief is more strongly disfavored. *See, e.g., Chesapeake Bay Foundation, Inc. v. DCW Dutchship Island, LLC*, 439 Md. 588 (2014).

I agree that the Elsers should have been much more certain of their property lines before they built the garage and, for that matter, before they installed wiring and lighting on their neighbors' property. However, I do find that it would be a disproportionate hardship if all of their

requested variance relief were denied, especially since the garage is a good distance from the Lehnert/Karavedas home and is separated by dense forest. If the rear yard setback regulations are strictly interpreted, the Elsans will experience a practical difficulty because they would have to remove an extra 2 ½ feet from the back corner of the garage and they contend this may cause significantly greater structural issues. If they are required to meet the height limitations they will have to alter the entire roof structure which will also impact the architectural symmetry with their residence. I also appreciate the fact that the Elsans have asked to amend their Petition in deference to Ms. Lehnert's expressed concerns. However, under all the circumstances I cannot ignore the fact that Mr. Karavedas and Ms. Lehnert still object to the setback variance. I do, however, also note that they have stated that they do not object to the Elsans' requested one foot height variance.

Finally, I find that the height variance can be granted in harmony with the spirit and intent of the BCZR, and in such manner as to grant relief without injury to the public health, safety and general welfare.

THEREFORE, IT IS ORDERED this 29th day of **October, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing for an amendment to the Final Development Plan ("FDP") of Cameron Mill for the purpose of adjusting the lot lines of Lots 35, 26 and 53A, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the variance to allow an accessory building (existing garage) with a height of 16 ft. in lieu of the maximum allowed 15 feet, pursuant to § 400.3, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the *Amended* Petition for Variance, to allow an accessory building (existing garage) with a one (1) foot rear yard setback in lieu of the minimum required 2 ½ feet, be and hereby is, DENIED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at his 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, Petitioner would be required to return the subject property to its original condition.
2. Prior to issuance of permits Petitioner must comply with ZAC comments received from DEPS, a copy of which is attached hereto and made a part hereof.

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

Signed
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

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