

BEFORE THE BOARD OF APPEALS OF QUEEN ANNE’S COUNTY

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In the Matter of an Application by *
MD Residential Lacrosse, LLC * Case No. BOA-19-03-0029
Requesting a Zoning Variance *

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OPINION AND ORDER

Introduction

The matter before the Board of Appeals of Queen Anne’s County (“Board”) in this case is an application for a zoning variance filed by MD Residential Lacrosse, LLC (“Applicant”).¹ The Applicant seeks relief from the dual front-yard setback requirement applicable to corner lots in the NC-20 zoning district.

On May 8, 2019, beginning at 6:00 p.m., the Board conducted a public hearing in the main meeting room adjunct to the Board’s offices at 110 Vincit Street, Centreville, Maryland, to consider the Applicant’s variance request. At the beginning of the hearing, the Board established all requirements were met governing (1) the filing of the variance application, and (2) notice of the May 8th public hearing. No one attending the public hearing objected to the Board exercising jurisdiction over the Applicant’s case. Board members hearing the case were Mr. Kenneth R. Scott, Chairman; Mr. Howard A. Dean, Vice Chairman; and Mr. Craig W. McGinnes, Member.

Requested Relief

The Applicant requests a variance to §18:1-19.E.(1)(c)[4][d][i] of the Code of Public Laws of Queen Anne’s County (“Code”) to reduce the required front-yard setback from 25 feet to 17 feet to construct a single-family home. The 25-foot front-yard setback is applicable to the

¹The Applicant is the contract purchaser of the lot that is the subject of the variance request. Mr. John A. Wicker presently owns the lot.

Applicant's lot on two sides because the Applicant's lot is a corner lot abutting two streets. Along the south, the lot abuts Wicomico Road. Along the west, the lot abuts Caroline Road. The proposed single-family home will be set back 17 feet from Caroline Road. The Applicant thus asks for a variance in the amount of eight feet from the front-yard setback applicable to Caroline Road.²

Variance Standards

The standards the Board must apply to the Applicant's variance request are set forth in § 18:1-121.B. of the Code. To grant the requested variance the Board must find:

1. Literal enforcement of Chapter 18:1 of the Code would result in unnecessary hardship or practical difficulty as the result of specified conditions;
2. Those conditions are peculiar to the property involved;
3. Those conditions are not the result of any action taken by the appellant;
4. The variance will not be contrary to the public interest; and
5. Evaluation of the alternatives proves a variance is required.

In addition, under the provisions of § 18:1-122.A. of the Code, the Board must find any variance granted is no greater than an amount minimally required to ameliorate the conditions and circumstances giving rise to any practical difficulty or unnecessary hardship.

Property and Neighborhood Description

The Applicant's lot is in the Fourth Election District of Queen Anne's County at 201 Wicomico Road, about two-tenths of a mile east of Romancoke Road (Maryland Route 8) in the Stevensville area of the County ("Property"). The Property is designated as lot 2, block J, in the

²Ordinarily, the front-yard setback for lots zoned NC-20 is 35 feet. But in this case the lot is nonconforming in size, with a lot size that is closest to the minimum lot size established for land zoned NC-8. Accordingly, the front-yard setback is reduced to 25 feet under the provisions of § 18:1-127.E. of the Code, which provides "setbacks shall comply with setbacks for the NC District that is closest to the nonconforming lot in size."

First Section of the Kent Island Estates subdivision. In turn, block J is designated as parcel 109 on sectional zoning map no. 70.

The Property is zoned NC-20, Neighborhood Conservation (average residential lot size of 20,000 square feet). The Property is not in the Chesapeake Bay critical area. The Property is 10,000 square feet (0.23 of an acre) in size. The Property is rectangular, 50 feet wide by 200 feet deep. The Property is a corner lot. The Property's south side fronts 50 feet along the north side of Wicomico Road. The Property's west side fronts 200 feet along the east side of Caroline Road. Although platted as a road, Caroline Road remains unbuilt. One or more lot owners apparently have cleared and graveled a narrow portion of the road's 40-foot wide platted right-of-way. But no lot relies solely on the block J portion of Caroline Road for access.

The Property is unimproved and substantially wooded. The Property contains no steep slopes; it is essentially flat. The Applicant proposes to clear much of the Property to build a two-level single-family home with an attached garage and porch. A short private driveway will provide access between the garage and Wicomico Road. The home will be connected to public sewer. A private well will be installed to provide potable water.

The First Section of Kent Island Estates constitutes the Property's neighborhood. Most lots in the neighborhood support single-family homes, but a significant number of lots are undeveloped. Many homes in the neighborhood are situated on two (or more) lots, especially the waterfront lots along Shipping Creek. A large area of woodlands and nontidal wetlands is located opposite the Property across Wicomico Road.

Department of Planning and Zoning Recommendation

Mr. Harold Veasel, a zoning inspector with the County's Department of Planning and Zoning ("P&Z") represented P&Z during the public hearing. Mr. Veasel offered into evidence P&Z's staff report, which the Board admitted as P&Z Exhibit 1. As Mr. Veasel went through the

report and described the Applicant's proposal, he referred to a copy of the variance site plan projected onto a large screen visible to those attending the hearing.

Mr. Veasel testified the Property is considered a corner lot even though it abuts one public street and one platted private street. This means the Property has two front yards and only one side yard. Mr. Veasel explained that although the Property is zoned NC-20, NC-8 zoning district setbacks apply because the Property is a nonconforming lot under NC-20 regulations. The lot's nonconformities include lot width and lot size. Mr. Veasel noted the NC-8 front-yard setback is 25 feet. The Applicant proposes a 17-foot setback from Caroline Road (a "side street"), which means the Applicant needs a variance in the amount of eight feet.

Mr. Veasel testified Caroline Road is a platted street that has not been constructed. He believes another lot abutting owner placed some gravel in the street's right-of-way to make the right-of-way useable for that owner. But the street is not traversed by the public. Mr. Veasel told the Board the Applicant will not use Caroline Road for access. The proposed home will face, and the proposed driveway will connect to, Wicomico Road.

In response to questions from Board members, Mr. Veasel indicated abutting lots in Kent Island Estates were assigned only one sewer hook-up if the same person owned the lots. Here, the Property was not part of a pair of lots in the same ownership, and thus the County assigned the Property its own sewer hook-up. The Applicant does not own the vacant lot to the east, lot 4.

In conclusion, Mr. Veasel testified that because the Property is narrow and would be buildable without a variance if Caroline Road were not shown on the subdivision plat, Planning and Zoning has no objection to the variance the Applicant seeks.

Applicant's Presentation

Mr. Lindsay Dixon appeared before the Board to present the Applicant's case. Through a trust, Mr. Dixon is one of the owners of the LLC that is the Applicant. Mr. Dixon testified the

Applicant has contracted to purchase the Property, which is only 50 feet wide. If the Applicant had to meet both the 5-foot side-yard setback and the 25-foot front-yard setback from Caroline Road, there would be only 20 feet left for a home. Mr. Dixon opined 20 feet is too narrow for a single-family detached home. He noted some townhouses are more than 20 feet wide.

Mr. Dixon testified the current landowner does not own the abutting lot 4. In addition, he testified the Applicant does not have lot 4 under contract. The Applicant is proposing to build a 28-foot wide home on the Property, which Mr. Dixon testified is the narrowest home that would sell in today's marketplace. Mr. Dixon told the Board the Applicant typically builds houses that are 40 feet wide. Here, however, a 28-foot wide home would be ideal for a young family. Although narrow, the home would still include a two-car garage, three bedrooms, and 2½ baths.

Mr. Dixon testified any home that was narrower and smaller would not be compatible with the neighborhood. He agreed with Mr. Veasel's description of Caroline Road. The road is platted but not built; it is a "paper street."

Testimony by Others

No one else appeared before the Board to testify or to ask questions about the Applicant's variance request.

Findings and Conclusions of the Board

Based on the testimony and exhibits provided by Mr. Veasel and Mr. Dixon, and duly considering the factors set forth in § 18:1-121.C. of the Code, the Board finds and concludes as follows.

1. Because of conditions associated with the Property the Board concludes literal enforcement of the front-yard setback found in §18:1-19.E.(1)(c)[4][d][i] of the Code along the lot line abutting Caroline Road would result in practical difficulty. According to Applicant's Exhibit 5, the Property was platted as a lot in 1951, which is long before the County adopted its

current zoning and subdivision regulations. Under today's Code the Property is a substandard lot. The Property is both smaller (by 10,000 square feet) and narrower (by 50 feet) than lots created under today's NC-20 zoning regulations in large-lot subdivisions. The narrowness of the Property is evident from the County's policy in Kent Island Estates of assigning only one public sewer tap to abutting lots in the same ownership, which forces lot owners to consolidate similar nonconforming lots. Here, the Property is not in the same ownership as the abutting lot. Thus, the Property received its own sewer tap.

In addition to its nonconforming width and size, the Property is a corner lot. In 1951, the subdivider of Kent Island Estates could not foresee that one day the lot line abutting a side street would be considered a second front yard. The Board notes that all lots along the block of Caroline Road of which the Property is a part abut existing streets. Thus, no lot in this block relies solely on Caroline Road for access. The Board also notes it is very unlikely Caroline Road will ever be built to the south because of the presence of wetlands.

2. The Board concludes the foregoing conditions and circumstances are peculiar to the Property. The Board finds the Property is peculiarly affected by its narrowness and its status as a corner lot. A lot as narrow as the Property could support a reasonably sized home if it were not a corner lot. And a corner lot could support a reasonably sized home if it were wider than the Property. Furthermore, the Board finds it peculiar that Caroline Road will surely always be a paper street. Caroline Road is not needed for access by any abutting lot, and wetlands beginning on the south side of Wicomico Road will prevent constructing Caroline Road to the south.

3. The Board concludes the foregoing conditions are not the result of actions taken by the Applicant. Neither the Applicant nor the current landowner is responsible for the Property's small size and narrowness. The Property's size and width were established in 1951 with the platting of Kent Island Estates.

4. The Board concludes that granting the requested variance will not be contrary to the public interest. On the one hand, a reduced side-street front yard will have no impact on a platted but unbuilt road the public does not use. On the other hand, granting the variance will allow the Applicant to construct a well-designed single-family home on the Property—a home somewhat smaller but comparable in size and value to improved lots in the neighborhood. The Board concurs with Mr. Dixon that a 20-foot wide home would not be compatible with the neighborhood. The Board also concludes the 17-foot “front” yard next to Caroline Road that will remain after approval of the requested variance is more than adequate to protect both the right-of-way of a non-existent Caroline Road and improvements to be built on the Property.

Based on the foregoing considerations, and on the fact no one appeared before the Board to oppose the requested variance, the Board concludes the Applicant’s proposal is in the public interest. The Board notes the proposed home will add value to the Property. In turn, an increase in the Property’s value will have a positive effect on the values of other lots in the neighborhood. As Mr. Dixon testified, the proposed home will make an attractive residence for a young family. Providing homes for young families in the County is in the public interest. Finally, in this case, the Board finds it significant the Department of Planning and Zoning does not object to approval of the requested variance.

5. The Board concludes an evaluation of possible alternatives establishes that the requested variance is required. The Property’s small size and narrowness make it impossible to improve the Property with a reasonably sized and compatibly designed home that will be an asset to the neighborhood. Moreover, locating the proposed home closer to the lot line opposite Caroline Road is also impossible. The Applicant proposes a 5-foot setback along the Property’s eastern side. Five feet is the minimum setback allowed by the Property’s zoning and, in the Board’s view, is the minimum required to meet the purposes of a side-yard setback.

6. The Board concludes the requested variance is the minimum deviation from the provisions of Chapter 18:1 that would allow the Applicant to build a reasonably sized and compatibly designed home in this single-family neighborhood. As noted, the home cannot be situated on the Property any farther to the east. Nor can the home be any narrower than the 28 feet the Applicant proposes. If the home were any narrower, it would detract from the character of the Kent Island Estates neighborhood. Therefore, the Board finds the Applicant has minimized the variance needed to develop the Property in a reasonable manner.

Decision


Based on the foregoing findings and conclusions, by a vote of three in favor and none opposed, the Board grants to the Applicant a variance to §18:1-19.E.(1)(c)[4][d][i] of the Code to reduce the required front-yard setback, applicable to the Property's lot line abutting Caroline Road, from 25 feet to 17 feet to construct a two-story single-family home with an attached garage and porch. The Applicant must construct the home in substantial accord with the variance site plan (Applicant's Exhibit 8).

ORDER

For the reasons set forth in the foregoing Opinion, it is this 29th day of May, 2019, ordered that the variance requested for MD Residential By Lacrosse, LLC, Contract Purchaser of land owned by John A. Wicker, in Case No. BOA-19-03-0029, be granted.



Kenneth R. Scott, Chairman



Howard A. Dean, Vice-Chairman

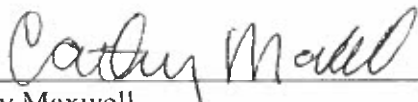


Craig W. McGinnes, Member

State of Maryland, County of Queen Anne's:

I HEREBY CERTIFY that the foregoing is a true and correct copy of the Opinion and Order of the Board of Appeals of Queen Anne's County in Case Number BOA-19-03-0029, for MD Residential By Lacrosse, LLC, Contract Purchaser of land owned by John A. Wicker, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on May 8, 2019 and that the minutes and a recording of the May 8, 2019 meeting are filed in the office of Board of Appeals.

Certified this 29th day of May, 2019 by:



Cathy Maxwell
Clerk to the Board of Appeals