

BEFORE THE BOARD OF APPEALS OF QUEEN ANNE’S COUNTY

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In the matter of Application by * Case No. BOA-23-03-0145

Donald Parr *

for Zoning Variance *

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FINAL DECISION OF THE BOARD

Introduction

The Queen Anne’s County Board of Appeals (the “Board”) held a meeting on May 11, 2023 at 5:15 p.m. to consider Case No. BOA-23-03-0145 for a variance application filed by Donald Parr (hereinafter the “Applicant”). The Board members present were Chairman, Howard Dean, and Board Members Craig W. McGinnes and Michael Lesniowski.

At the beginning of the hearing, the Board established that all requirements were met governing the filing of the variance application, and proper notice of the May 11th public hearing. Board Chairman Dean administered the oath to all who wished to testify on the application, including the Applicant.

Applicant’s Request

The Applicant requests a variance to the provision of § 18:1-19.E.(1)(c)[4][e][i] of the Code of Public Local Laws of Queen Anne’s County, 1996 Edition (the “Code”), to reduce the required 35 foot front yard setback to 25 feet to construct a replacement 2-story single-family dwelling with two covered porches. The Applicant’s property is located at 318 Old Point Road, Chester, Maryland (the “Property”). The Property is located in the Neighborhood-Conservation-1 (NC-1) Zoning District and Limited Development Area (LDA) Critical Area designation. The Applicant submitted a Building Permit (No. BR22-07-0531) to construct a two-story single-family dwelling with the first floor measuring 40’ x 36’ overall with a 20’ x 8’ back covered porch and a 12’ x 6’ front covered porch and a second floor measuring 40’ x 28’ overall with 36 square feet of unfinished storage. The total floor area is 2,190 square feet. On February 10, 2023, the Queen Anne’s County Zoning Inspector denied the Applicant’s Building Permit after determining that

the proposed dwelling did not meet the required front yard setback in the NC-1 Zoning District of 35 feet as required by § 18-1-19.E. of the Code.

Applicable Provisions of the Code

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 as follows:

1. Literal enforcement of this Chapter 18:1 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 alternatives proves *variance* is required.

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

Property Description and Department of Planning & Zoning Recommendations

Joe Pippin, Zoning Inspector with the Department of Planning & Zoning presented his staff report. Mr. Pippin said the Applicant is seeking to construct a two-story single-family dwelling. He said the Applicant has requested to reduce the front yard setback from 35 feet to 25 feet.

Mr. Pippin identified the Property and its location. He identified the Property in the Fourth Election District of Queen Anne's County located at 318 Old Point Road at Tax Map 63 Parcel 78. The Property is 0.3448 acres and is zoned NC-1 and located within the Limited Development Area Modified Buffer Area in the Critical Area. It is improved with a pier.

The property is partially located in a floodplain Zone AE Elevation 7 feet. Mr. Pippin said that there are no hydric soils, wetlands, or sensitive species on the Property. However, the entire Property is located in the LDA. He said that a dwelling was previously on the Property that was constructed in 1896 but it was demolished after the Applicant obtained a permit. That dwelling sat 19 feet from the front yard property line.

Mr. Pippin explained the layout of the Property. He said that the existing septic system is in the rear yard and that the Applicant cannot push the septic system towards the rear as it will encroach into the Buffer. He said that while the Property is zoned NC-1, it is a nonconforming lot that does not meet the applicable setbacks such that § 18:1-127.E. of the Code permits the application of setbacks for the NC District that is closest to the nonconforming lot in size. In this instance, Mr. Pippin has applied the setbacks for the NC-15 Zoning District. Mr. Pippin said that lots along Old Point Road predate the Code.

Mr. Pippin showed a site plan of the Property, on which he highlighted the proposed dwelling in yellow and showed it in relation to the dwelling that previously existed. He said that the location of the proposed dwelling, which encroaches into the front yard setback, is necessitated by the location of the septic fields and Critical Area Buffer.

He said that the proposed dwelling meets the applicable lot coverage. He concluded by stating that an approved Buffer Mitigation Plan will be required for any increase in lot coverage onsite at a ratio of 2:1 and that the Zoning Staff had no objection to the approval of the application.

Applicant's Presentation

Walter Marciniak, Builder with WJM Properties, presented the application on behalf of the Applicant. He said that the Applicant previously demolished the house on the Property after obtaining a permit from the County. He said that he and the Applicant have worked with the County Department of Planning & Zoning for a year and a half before finalizing the Applicant's Building Permit application. He said that he designed approximately 15 variations of the building site plan while working with the County Department of Environmental Health to satisfy their requirements.

Mr. Marciniak explained that the location of the existing septic and well caused issues with site redevelopment design. He said that the modified septic field left approximately a few inches to where the new dwelling could be located. By modifying the septic field, the Applicant was able to set the house back 25.5 – 26 feet from the front yard property line, which Mr. Marciniak said is 6 feet further than where the original dwelling sat from the property line.

Mr. Marciniak said that the right side of the dwelling will be elevated 9 feet due to the 7 foot floodplain. He said that the stormwater will flow from the front of the house on the right side

down the property line to a sand mounted septic system. Water coming off the left-hand side of the dwelling will divert to a swale.

Mr. Marciniak said that the Applicant, or any subsequent property owner, would not be able to construct anything behind the proposed dwelling due to the location of the septic reserve area. He said that the proposed dwelling is well within the permitted lot coverage and building envelope, aside from the front yard setback.

Mr. Marciniak explained the current condition of the Property. He said that the existing utility pole onsite will be buried underground by the utility company. He said that the well is 10 feet from the front yard property line, which was the only suitable location on the Property at the time it was constructed. Mr. Marciniak then explained how he worked with the County for years to abandon the old septic system and said that the new septic field will be an improvement to the Property.

He said that the Property is approximately 15,000 square feet, which resulted in the County applying the NC-15 Zoning District for purposes of determining setbacks. However, he said that the Property was originally smaller than that, which permitted the application of another zoning district with less of a front yard setback. However, he said that a subsequent owner of the Property added bulkhead which added 110 square feet to the Property. When the surveyor measured the Property, the surveyor measured to the outside edge of the bulkhead. Had the surveyor not included the bulkhead in the measurement of the Property, the front yard setback likely would have been 25 feet as the setbacks from a different NC Zoning District would have applied.

Board Member Lesniowski asked the Zoning Inspector if the Applicant could have rebuilt the dwelling on the foundation that previously existed without seeking a variance. Mr. Pippin responded that the existing structure could have been developed if the existing foundation remained in place without seeking a variance.

Testimony from the Public

After the Applicant presented his case, Chairman Dean asked if any members of the public wished to testify. Diane Peake testified in favor of the application.

Findings and Conclusions of the Board

The Board finds the testimony and application provided by the Applicant credible and persuasive. The Board concludes that the evidence justifies approval of the requested variance. Based on the evidence presented, and duly considering the factors set forth in §18:1-121.C. of the Code, the Board specifically finds and concludes as follows:

1. A literal enforcement of the front yard setback would result in practical difficulty.
2. The location of the existing septic and well create practical difficulty and site restrictions.
3. The new dwelling sits farther from front yard property line than the dwelling that previously existed on the Property.
4. The Property is a nonconforming lot.
5. The variance will not be contrary to the public interest.
6. The variance is the amount minimally necessary to ameliorate conditions giving rise to any practical difficulty or unnecessary hardship.

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 from the provisions of § 18:1-19.E.(1)(c)[4][e][i] to permit the Applicant to reduce the required 35 foot front yard setback to 25 feet to construct a replacement two-story single-family dwelling with two covered porches.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 1st day of June, 2023 ordered that the variance requested for Donald Parr, in Case No. BOA-23-03-0145, be granted.



Howard A. Dean, Chairman



Craig W. McGinnes, Vice-Chairman



Michael A. Lesniowski, 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 No. BOA-23-03-0145, for Donald Parr, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on May 11, 2023 and that the minutes and a recording of the May 11, 2023 meeting are filed in the office of Board of Appeals.

Certified this 1st day of June, 2023 by:



Cathy Maxwell
Clerk to the Board of Appeals

BEFORE THE BOARD OF APPEALS OF QUEEN ANNE’S COUNTY

* * * * *

In the matter of Application by * Case No. BOA-23-03-0150
Dennis R. Powell and Patti P. Powell, *
Trustees of the Dennis R. Powell & Patti *
P. Powell Revocable Trust *
for Zoning Variance *

* * * * *

FINAL DECISION OF THE BOARD

Introduction

The Queen Anne’s County Board of Appeals (the “Board”) held a meeting on May 11, 2023 at 5:30 p.m. to consider Case No. BOA-23-03-0150 for a variance application filed by Dennis R. Powell and Patti P. Powell, Trustees of the Dennis R. Powell & Patti P. Powell Revocable Trust (hereinafter the “Applicants”). The Board members present were Chairman, Howard Dean, and Board Members Craig W. McGinnes and Michael Lesniowski.

At the beginning of the hearing, the Board established that all requirements were met governing the filing of the variance application and proper notice of the May 11th public hearing. Board Chairman Dean administered the oath to all who wished to testify on the application, including the Applicants.

Applicant’s Request

The Applicants request a variance to the provision of § 18:1-19.E.(1)(c)[4][f][i] of the Code of Public Local Laws of Queen Anne’s County, 1996 Edition (the “Code”), to reduce the required 35 foot front yard setback from Cedar Road to 20 feet to construct a replacement 1-story single family dwelling including garage, front porch and rear deck on a corner lot. The Applicants’ property is located at 243 Bentons Pleasure Road, Chester, Maryland (the “Property”). The Property is located in the Neighborhood-Conservation-20 (NC-20) Zoning District and Limited Development Area (LDA) Critical Area designation. The Applicants submitted a Building Permit (No. BR23-01-0056) to construct a 1-story 64’ x 53’3” single-family dwelling to include a 24’ x 23’9” garage, a 27’ x 6’ front porch, and a 26’ x 8’ rear deck. On March 17, 2023, the Queen

Anne's County Zoning Inspector denied the Applicants' Building Permit after determining that the proposed dwelling did not meet the front yard setback from Cedar Road as required by § 18-1-19.E. of the Code. As the Property is a corner lot, the Code requires the Applicants to meet the front yard setbacks from both streets – Bentons Pleasure Road and Cedar Road.

Applicable Provisions of the Code

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

1. Literal enforcement of this Chapter 18:1 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 alternatives proves *variance* is required.

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

Property Description and Department of Planning & Zoning Recommendations

Joe Pippin, Zoning Inspector with the Department of Planning & Zoning presented his staff report. Ms. Pippin identified the Property and its location. He identified the Property in the Fourth Election District of Queen Anne's County at 243 Bentons Pleasure Road. The Property is .665 acres. The Property is designated as parcel 378, Lot 58D, on Queen Anne's County Tax Map 57 and is zoned NC-20 and designated Limited Development Area in the Critical Area. There are some hydric soils on the Property.

Mr. Pippin said the Applicants applied and received a permit from the Department of Planning & Zoning to demolish the dwelling that previously existed on the Property that was built prior to 1957. The dwelling has since been demolished. Mr. Pippin said the previous dwelling sat approximately 12 feet from the front yard property line along Cedar Road. He said the Applicants are seeking a variance of 15 feet to construct the new dwelling 20 feet from the front property line

along Cedar Road, which will allow the new dwelling to sit back 8 feet further from the property line than the dwelling that previously existed on the Property.

Mr. Pippin said that the proposed dwelling is consistent in size with dwellings on neighboring properties which average from 1,600 square feet to 2,600 square feet. He said that Lot 1 in the neighborhood, which is on the opposite corner of Bentons Pleasure Road and Cedar Road, is 30 feet from the property line along Cedar Road.

Given the Property size, the fact that it fronts two roads requiring two front yard setbacks, and that the Applicants have a need for a single-story home, Mr. Pippin said that the Department of Planning & Zoning did not object to the variance request.

Applicant's Presentation

Mr. Powell presented the application for a variance to reduce the required front yard setback from Cedar Road from 35 feet to 20 feet. He said that they previously demolished the dwelling that existed on the Property after obtaining a permit through the Department of Planning & Zoning. Prior to demolition, the house sat 12 feet from the front property line along Cedar Road. He said they are now seeking to construct a dwelling 20 feet from the front property line along Cedar Road.

He said that the Property is unique because it fronts two roads which requires them to meet the front yard setbacks on two sides of their Property, rather than one. He said that the proposed dwelling fronts on Bentons Pleasure Road and that the side facing Cedar Road is a side yard. The Applicants are constructing a dwelling on the Property for their son to reside in. Mr. Powell stated that his son has a condition, which the Applicant referred to as "A.S.", which prevents him from being able to utilize stairs. Due to his condition, the Applicants are seeking to construct a 1-story accessible dwelling for him with minimal stairs. Due to the lot width and the need to construct a 1-story dwelling, the variance is necessary to provide a reasonable dwelling that is accessible to the Applicants' son who will reside there.

Testimony from the Public

Chairman Dean asked if any members of the public wished to testify in favor, or against, the application. Temple Peirce testified in favor of the application. He said that the Applicants

have improved the neighborhood with the renovation of another dwelling in the neighborhood and that he was in favor of the application.

Findings and Conclusions of the Board

The Board finds the testimony and application provided by the Applicants credible and persuasive. The Board concludes that the evidence justifies approval of the requested variance. Based on the evidence presented, and duly considering the factors set forth in §18:1-121.C. of the Code, the Board specifically finds and concludes as follows:

1. A literal enforcement of the front yard setback on two sides of the Property would result in practical difficulty.
2. The Applicants have a compelling need to construct a 1-story single-family dwelling.
3. The proposed dwelling sits farther from the lot line along Cedar Road than the dwelling that previously existed on the Property.
4. The lot size is narrow which prohibits the location of the proposed dwelling.
5. The proposed dwelling size is modest and reasonable.
6. The variance will not be contrary to the public interest.
7. The variance is the amount minimally necessary to ameliorate conditions giving rise to any practical difficulty or unnecessary hardship.

Decision

Based on the foregoing findings and conclusions, by a vote of three in favor and none opposed, the Board grants to the Applicants:

A variance from the provisions of § 18:1-19.E.(1)(c)[4][f][i] to permit the Applicants to construct a 1-story 64' x 53'3" single-family dwelling to include a 24' x 23'9" garage, a 27' x 6' front porch, and a 26' x 8' rear deck, 20 feet from the front yard setback along Cedar Road.

ORDER

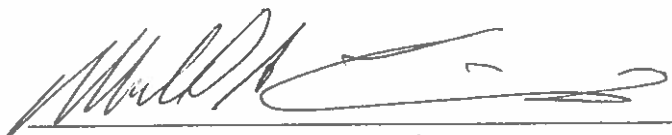
For the reasons set forth in the foregoing Opinion, it is this 1st day of June, 2023 ordered that the variance requested for Dennis R. Powell and Patti P. Powell, Trustees of the Dennis R. Powell and Patti P. Powell Revocable Trust, in Case No. BOA-23-03-0150, be granted.



Howard A. Dean, Chairman



Craig W. McGinnes, Vice-Chairman



Michael A. Lesniowski, 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 No. BOA-23-03-0150, for Dennis R. Powell and Patti P. Powell, Trustees of the Dennis R. Powell and Patti P. Powell Revocable Trust, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on May 11, 2023 and that the minutes and a recording of the May 11, 2023 meeting are filed in the office of Board of Appeals.

Certified this 1st day of June, 2023 by:



Cathy Maxwell
Clerk to the Board of Appeals