

BEFORE THE BOARD OF APPEALS OF QUEEN ANNE’S COUNTY

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In the Matter of the Application of *
Ralph L. Powell and Sarah F. Freeberg * Case No. V-18060002
for a Zoning Variance *
* * * * *

OPINION AND ORDER

Introduction

The matter before the Board of Appeals of Queen Anne’s County (“Board”) in this case is a variance application filed by Ralph L. Powell and Sarah F. Freeberg (“Applicants”). The Applicants seek relief from the requirement that a residential accessory building must be in a side or rear yard.

On June 27, 2018, beginning at 5:00 p.m., the Board conducted a public hearing in the main meeting room in the County’s office building at 110 Vincit Street, Centreville, Maryland, to consider the Applicants’ 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 public hearing. No one attending the public hearing objected to the jurisdiction of the Board to hear the Applicants’ case. Board members hearing the case were Mr. Kenneth R. Scott, Chairman; Mr. Craig W. McGinnes, Member; and Mr. William D. Moore, Alternate Member.

Requested Relief

The Applicants request a variance from § 18:1-45.B.(1)(b)[3] of the Code of Public Laws of Queen Anne’s County (“Code”) to construct an accessory building in the front yard of the Applicants’ lot. Section 18:1-45.B.(1)(b)[3] of the Code requires residential accessory structures

to be in a side yard or a rear yard. Thus, the Applicants request a complete variance to the yard requirement. The accessory building for which the Applicants seek a variance is an L-shaped shed, which the Applicants already built. One section of the shed is eight feet wide by nine feet deep, with the other section measuring seven feet by 15 feet.

Variance Standards

The standards the Board must apply to the Applicants' variance request are set forth in § 18:1-121.B. of the Code:

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 of the Code, the Board must find the requested variance is no greater than the relief minimally required to ameliorate the circumstances giving rise to practical difficulties or unnecessary hardship.

Property and Neighborhood Description

The Applicants' property is in the Fourth Election District of Queen Anne's County on Kent Island. The property is located at 403 Queens Court, about two miles south of the Kentmorr Air Park by road, in the Stevensville area of the County ("Property"). The Property is designated as Lot 8 on Plat 5 of the Queen Anne Colony subdivision, which in turn is designated as parcel 75 on Sectional Zoning Map No. 70. The Property is zoned NC-15, Residential (average lot size of 15,000 square feet). The Property is in the Chesapeake Bay Critical Area. Critical Area maps designate the Property as part of an LDA, Limited Development Area.

The Property is a dual-frontage lot. Queens Court abuts the west side of the Property for about 106 feet. Congressional Drive abuts the east side of the Property for about 107 feet. The Property is basically rectangular. Topographically, the Property is essentially flat. The Property is 24,082 square feet (about 0.55) in size. Improvements on the Property include a one-story single-family home facing Queens Court, a gravel driveway accessing Queens Court, and the shed that is the subject of the Applicants' variance request. The Applicants sited the shed 21 feet from the northeast corner of the home, three feet off the Property's northern lot line.

A private well and septic system serve the Property. Vegetation on the Property is mostly lawn, with ornamental landscaping and several mature trees.

The neighborhood is the Queen Anne Colony subdivision, which is situated on a peninsula with Price Creek to the east and the Chesapeake Bay to the west. Queen Anne Colony is developed with single-family homes about the same size as the Applicants' home on similarly sized lots. The Property, however, is one of the few dual-frontage lots in the neighborhood, and the only dual-frontage lot on Plat 5 of Queen Anne Colony. Single-family homes in the neighborhood are improved with typical residential accessory structures, including sheds. Two sheds are situated just north of the Applicants' home, one on lot 9 and one on lot 10.

The other significant land use in the neighborhood is a marina located between the east side of Congressional Drive and west side of Price Creek. The east side of the Property faces the marina.

Department of Planning and Zoning Recommendation

Mr. Harold Veasel, a zoning inspector with the Department of Planning and Zoning ("P&Z"), represented P&Z during the public hearing. Mr. Veasel described the Applicants' variance request and explained P&Z's staff report, which the Board admitted into evidence as P&Z Exhibit 1. Mr. Veasel noted the only variance the Applicants' need is to allow an accessory

building in the front yard. Building-cover calculations establish the Applicants meet the 60% cover allowed for accessory buildings, as well as meet Critical Area impervious coverage limits.

Mr. Veasel testified the Property has two front yards because of its location between Congressional Drive and Queens Court. Therefore, without a variance, the Applicants would be restricted to locating a shed only in the Property's side yards. But in this case, the Property's northern side yard is relatively narrow, and the southern side yard is occupied by the driveway serving the Applicants' home.

M. Veasel testified the shed that is the subject of the variance request is already built. The shed meets the side-yard setback requirement. The shed also meets the required front-yard setback from Congressional Drive. Accordingly, if the Property fronted only Queens Court, the shed would not need a variance.

In conclusion, Mr. Veasel testified the Department of Planning and Zoning has no objection to approval of the requested variance.

Applicants' Presentation

Ms. Sarah Freeberg appeared as the Applicants' first witness. Ms. Freeberg testified Mr. Powell and she were not aware zoning regulations defined the Property as having two front yards. She noted the Property's driveway extends from Queens Court, which they thought is the front yard. The shed is in the yard facing Congressional Drive. A marina is located on the other side of Congressional Drive. Ms. Freeberg opined the shed has no negative impact on the marina. She also believes the shed has no negative impact on the neighbors to the north.

Mr. Ralph "Jay" Powell also appeared as a witness. Mr. Powell testified he is an engineer. He told the Board he is familiar with construction codes. Mr. Powell testified the shed is 172 square feet in size. According to Mr. Powell, ordinarily no permit is required for a shed under 200 square feet in size. Thus, he believed he did not need a permit to build the shed. Mr. Powell testified he was not aware that in the Critical Area a permit is needed for any sized shed.

When he learned of the requirement for a permit, he applied for one. After applying, the issue arose with the Property having two front yards.

Mr. Powell agreed with Ms. Freeberg that the shed has not created, and will not create, any adverse impacts to the neighboring lots and the marina.

Participation by Others

Ms. Liz Evans appeared before the Board to ask for a clarification about the Applicants' variance request. Ms. Evans resides at 300 Congressional Drive, which is about two blocks north of the Property. She told the Board she serves as President of the Queen Anne Colony community association.

Ms. Evans asked whether the variance application is only for the shed that the Applicants already built. She also asked if the shed is considered one shed or two sheds. The Board's Chair told Ms. Evans the variance involves only the shed already built. Noting the previous comments of Mr. Veasel, the Chair also told Ms. Evans that even though the structure the Applicants built apparently has two sections, the shed is considered one shed because the two sections are attached to each other and form one footprint.

Findings and Conclusions of the Board

Based on the testimony and exhibits provided by Mr. Veasel of the Department of Planning and Zoning, Ms. Freeberg, and Mr. Powell, 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 a literal enforcement of the provisions of § 18:1-45.B.(1)(b)[3] of the Code would result in practical difficulty. The Property is unusually impacted by its dual road frontage, which results in two comparatively large front yards. The two front yards encompass about 90% of the Property. The Property's two side yards make up remaining the 10%. The side yard to the north, however, is too narrow to support a usable shed, given the applicable side-yard setback and separation-

distance requirement between the shed and the Applicants' home. The driveway serving the Property occupies the Property's southern side yard, which precludes building a shed in that yard.

The location of the home on the Property and the previous siting of the driveway are relevant considerations because the Property was platted in 1971, long before adoption of current zoning regulations. Moreover, according to SDAT records (part of Applicants' Exhibit 2), the home on the Property was built in 1999, which is also before adoption of the current Code. When the lot was platted and the home was built, no one could contemplate the effect of a future zoning regulation that now defines the Property as having two front yards.

The home on the Property was built with the front of the home facing Queens Court. Queens Court also was established as the home's access and address. Thus, in a practical sense, Queens Court delineates the Property's functional front yard. The shed is not located in this functional front yard. Accordingly, if it were not for the Congressional Drive frontage, the shed would not need a variance. The effect of the second road frontage is especially burdensome in this case, because the shed is set back about 68 feet from Congressional Drive. A 68-foot setback is well beyond the front-yard setback that would apply if Congressional Drive were the Property's only road frontage.

2. The Board concludes the foregoing conditions are peculiar to the Property. The Property's two front yards essentially constitute the Property's only buildable area. Typically, single-family lots have available to them rear yards to support accessory structures that are larger than, or at least as large as, the front yards. Aerial photographs in evidence show that other lots in the neighborhood are typical in this way. The Property is also peculiar because the second front yard faces a marina. The front yard of homes in a residential neighborhood usually do not confront a marina (or other intense commercial use) immediately across a neighborhood street.

The location of the marina reinforces the Congressional Drive side of the Property being considered the Property's functional rear yard.

The Board concludes the foregoing peculiar conditions work to create a practical difficulty, and thus justify the variance the Applicants seek.

3. The foregoing conditions are not the result of actions taken by the Applicants. The evidence establishes this section of Queen Anne Colony was platted in 1971 (Applicants' Exhibit 7), and the home on the Property was built in 1999 (part of Applicants' Exhibit 2). The Applicants purchased the Property in 2017 (also part of Applicants' Exhibit 2.) The Applicants, therefore, are not responsible for the platting and original development of the Property, which together work to create a practical difficulty when the accessory-building yard standard is strictly applied.

4. The Board concludes the variance will not be contrary to the public interest. The variance will not detrimentally impact the two abutting lots to the north. The shed is in an area next to the rear yards of those lots, where the owners of those lots have located their own sheds. The variance will not detrimentally impact the lot to the south, because the shed is located about 95 feet from that lot, on the other side of the Property. The variance also will not impact the marina on the opposite side of Congressional Drive. The shed is over 100 feet from the marina. In addition, the marina has its own shed along Congressional Drive, as well as an area devoted to dry boat storage. Even if the Applicants' shed were much closer to the marina, the uses in the marina would dwarf the shed.

The variance will not detrimentally impact Congressional Drive or the public using the road, because the shed is set back 68 feet from the road—a distance greater than the minimum front-yard setback for even principal buildings. If the Property were unimproved, a new home could be much larger and sited much closer to Congressional Drive than the shed. Furthermore,

Congressional Drive is not a through street. The road ends south of the Property at the tip of the peninsula. The shed does not affect site distance along the road.

The Board believes the shed will modestly enhance the value of the Property. As a result, the shed will correspondingly enhance the values of neighboring properties. The Board also notes neighboring landowners did not appear before the Board, or send letters to the Board's clerk, to object to the Applicants' variance request. From the lack of opposition to the variance, and the lack of objection by the Department of Planning and Zoning, the Board infers the Applicants' shed is a compatible improvement consistent with the public interest.

5. The Board concludes that an evaluation of alternatives proves the requested yard variance is required. Because of the Property's (1) dual-road frontage, (2) small northern side yard, and (3) already-occupied southern side yard, no reasonable alternative exists. Obtaining a variance to allow an accessory building in one of the Property's two front yards is the only method by which the Applicants may build a shed on the Property. Having a shed on a 0.55-acre lot in this neighborhood is appropriate, reasonable, and in harmony with the neighborhood.

6. Finally, the Board concludes the variance requested is the minimum variance necessary. Granting a variance that, in effect, waives the yard-locational standard for this small accessory building is the only amount of variance that will provide relief from the peculiar conditions associated with the Property.

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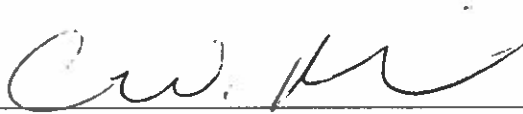
Based on the foregoing findings and conclusions, by a vote of three in favor and none opposed, the Board grants to the Applicants a variance from § 18:1-45.B.(1)(b)[3] of the Code to allow an L-shaped shed, 7 feet by 15 feet and 8 feet by 9 feet, to be located in the Property's front yard facing Congressional Drive, no closer than 68 feet to the road, substantially as depicted on Applicants' Exhibit 4.

ORDER

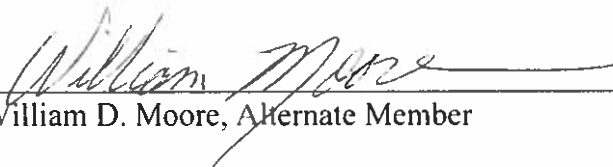
For the reasons set forth in the foregoing Opinion, it is this 22nd day of August, 2018, ordered that the variance requested for Ralph J. Powell and Sarah F. Freeberg, in Case No. V-18060002, be granted.



Kenneth R. Scott, Chairman



Craig W. McGinnes, Member




William D. Moore, Alternate 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 V-18060002, for Ralph J. Powell and Sarah F. Freeberg, which Opinion and Order resulted from a public hearing conducted by the Board of Appeals on June 27, 2018 and that the minutes and a recording of the June 27, 2018 meeting are filed in the office of Board of Appeals.

Certified this 22nd day of August, 2018 by:



Cathy Maxwell
Clerk to the Board of Appeals