

BOARD OF APPEALS

September 28, 2015

7:00 PM

ATTENDANCE: Board Members: Tim Thompson, Michael Salmon, Janine Antoshak, Priscilla Turgon, Bill Malesh, Town Attorney Fred Sussman, Planning and Zoning Director Mary Ann Skilling and Planning and Zoning Coordinator Dianna Battaglia.

Mr. Thompson called the hearing to order at 7:03 p.m.

APPROVAL OF MINUTES:

Motion made by Ms. Antoshak and seconded by Mr. Salmon to approve the July 27, 2015 meeting minutes as written. **All in Favor. Motion Passed.**

NEW BUSINESS:

SE2015-01 Special Exception-New Victory Christian Church:

Mr. Thompson indicated we are continuing discussion from the July 27th hearing.

Ms. Skilling stated the Staff Report includes the background. The Planning Commission made a recommendation and at the Board of Appeals hearing on July 27th it was determined further information is needed from the property owner for the members to vote favorably. A motion was made to continue the hearing and that's where we are today.

(Mr. Parker was sworn in)

Mr. Parker indicated thanks for the opportunity to present our case to the Board of Appeals. I am the owner of the property at 304 Aiken Avenue for five years. I'm an attorney and we have offices in White Marsh, Harford County and the good part of the building is seeing it used, it had been empty for several years and we've had some interesting applicants in the past: we've had a tattoo parlor, an X-rated video and a massage establishment, so we'd turned those down. So fortunately we've had two nice churches to apply and I think you had a question about parking. We've gone to the Post Office and the Perryville Inn and they said we could park there and of course the public parking. The two pastors have different times to meet on Sunday mornings so there shouldn't be any parking issues. We've done a background and they have good credit and have good reputations. So if there are any questions regarding the property?

Mr. Salmon indicated we had some concern about the Fire Marshal and Cecil County and if they had come out to look at the property.

Mr. Parker responded I'm not aware of that. My daughter takes care of those rentals. I know sometimes the inspectors would come in, I know we had the Fire Marshal there to make sure we had the lights at the exits, fire extinguishers, so everybody's on the same page to make sure fire doors and exit lights, when the daycare was there we had to put in metal doors and a back door for the children. Both of the pastors from the church are here to say something.

Ms. Skilling commented we have to establish, as in the Staff Report, that the criteria have been met for granting a Special Exception. You do have a copy of the report and enter it into the record. The Special

Exception uses, there are certain things they have to meet and I'm going to go through them very quickly from the Staff Report (attached). As part of the record we have provided areas that have been designated for parking, both public parking and those businesses that have given approval for parking areas.

(Mr. Malesh arrived at 7:15 p.m.)

Ms. Skilling continued with reading the Staff Report.

Ms. Turgon asked do we have documentation of shared parking, those agreements.

Ms. Skilling responded yes, that is on the map showing the areas they can park and the areas that gave permission and they have been using these areas. They also have access to on-street parking. There is adequate parking. They've never had a problem with the two because of the way they're scheduled.

Mr. Thompson asked do we have the Fire Marshal report, an inspection.

Ms. Skilling stated I don't have that specific to each one but when they go to Cecil County they will look at that.

Mr. Salmon questioned the property owner has until March 15th, the churches can continue obviously but the property owner has until March 15th...

Ms. Battaglia clarified anytime a Special Exception use is approved, every year we should receive a letter from the applicant stating they are still operating at the same space per the conditions that were set forth and that becomes part of their file as it renews each year.

Mr. Salmon continued so that's the only stipulation the Town is recommending?

Ms. Battaglia replied in addition to following requirements of Cecil County for permit and occupancy. Once you approve the use then a Zoning Certificate will be issued for them to go to Cecil County.

Mr. Fred Sussman, town attorney, indicated the way I typically do this with the Board of Appeals with other clients, the Board will decide how they are inclined to act on the application and then request the town attorney to prepare a proposed resolution for the board to review because your approval has to be subject to findings and a formal resolution. I will prepare a resolution based upon generally what you say you would like and then submit it back to you for review and approval. There needs to be a resolution making findings of fact and formally approving. When we do that resolution, staff can get the board together for a quick five minute meeting for the purpose of reviewing and approving the resolution and that's been done a number of times elsewhere. As a practical matter, these two applicants are using the space now anyway and have been so it's not as if they in particular are waiting for the approval to begin operations, to begin construction. Typically, I've worked with other clients, a member of the board would make a motion to request counsel to prepare a proposed resolution for the board to approve the special exception, subject to whatever conditions you want to impose and any other conditions that council may recommend because I may see something, a technical type of condition, and then when it comes back to you, you can say you approve this or no, we'd like to delete something. After I prepare the resolution I will email it to staff to distribute to the board for comment and expedite the process that way so by the time you get to actually meeting to approve you'll all individually have commented, if at all and be ready to approve and sign.

Mr. Malesh commented another option may be to add a condition subject to three year renewal, in three years come back to make sure everything's ok to avoid later problems with increased people attending and now there are parking issues in the area.

Mr. Sussman indicated three year renewal is not necessary. The code requires a certification each year that they continue to meet the requirements of the approval and the approval does not become final until you adopt the resolution.

Motion made by Mr. Malesh and seconded by Mr. Thompson to approve SE2015-01 Special Exception request for church use for the reasons set forth in the Staff Report and request Town attorney to prepare a resolution conditioned upon meeting all regulations for Cecil County permit and occupancy, utilizing shared and public parking and provide proof of continued compliance each year per Section 57.8. **All in Favor. Motion Carried.**

SE2015-02 Special Exception-Temple of Salvation Ministries:

Ms. Skilling stated we have the same conditions, the same answers to those conditions set forth in the Staff Report, and we'd like to enter into the record, with similar recommendations and motion set for the previous church. If you agree, you can enter a motion.

Motion made by Mr. Malesh and seconded by Ms. Antoshak to approve SE2015-02 Special Exception request for church use for the reasons set forth in the Staff Report and request Town attorney to prepare a resolution conditioned upon meeting all regulations for Cecil County permit and occupancy, utilizing shared and public parking and provide proof of continued compliance each year per Section 57.8. **All in Favor. Motion Carried.**

V2015-01 Variance:

Mr. Thompson proceeded to the next item on the agenda for 143 Bayscape Drive. The property owner is requesting a variance from the side setback requirement in order to construct a 24'x24' garage and plans include demolition of the existing 10'x20' enclosed sunroom that was built in 1992. The setback requirement for R-1 zoning is 10 feet from the side property line and he's going to encroach 4 feet, or 6 foot from the property line. So he's asking for a variance from that requirement.

(Mr. David McCarver was sworn in)

Mr. McCarver indicated I live at 143 Bayscape Drive.

Mr. Salmon asked why is it you think we should grant you a variance?

Mr. McCarver responded there are other garages in the neighborhood that are in the same boat that I'm in, my neighbor here, the people on the other side of him have a garage and they received a variance and they were ok with it, and I didn't care.

Mr. Salmon asked what is that address, who received the variance?

Mr. McCarver replied the neighbor to the right of next to me.

Mr. Salmon reiterated so they got a variance.

Mr. McCarver responded yes, they were in the same boat I am, I think it was a couple of feet.

Mr. Thompson stated so you feel as though they got one, you should.

Mr. McCarver replied I don't want to say that necessarily, but if you're asking why I want a garage it's for the convenience of having a garage.

Mr. Salmon commented the question is why do you want us to give you a variance from the setback requirement?

Mr. McCarver responded because I want to do a 24 foot by 24 foot garage that's a true 2-car garage instead of a 20 foot and that wouldn't give me more room.

Mr. Salmon stated so that's the only reason, you want a bigger garage, you don't have any special reason.

Mr. McCarver replied I have three cars, I have a vehicle that I work on a lot, and it would be a convenience to have it in a garage that I don't have to, at the end of the day, pick everything up.

Mr. Malesh asked is the owner of 149 Bayscape Drive here? So you would like to testify as well?

Ms. Skilling asked the applicant, the variance standards you have to address, one of the things I wanted to ask is it possible to build a smaller garage and/or in the rear of your property, because one of the criteria is a variance may be granted if it concludes that strict enforcement of the Chapter would not result in practical difficulty or unnecessary hardship for the applicant and that by granting the variance the spirit of the Chapter will be served, public safety, welfare, substantial justice done. It may reach these conclusions if it finds that if the applicant complies strictly with the provisions he can make no reasonable use of his property. I'm not sure, and the response we have is "the proposed garage width of 24 feet could be reduced to meet the side setback requirement and accommodate two vehicles. We've given you information and/or documentation to that affect, what size do you need? Two vehicles can get in a 20 foot wide garage.

Mr. McCarver responded I understand that but I just applied for the 24 by 24, I didn't think it would be that big of a deal and when I spoke to the homeowner he didn't seem like he had a problem at the time.

Ms. Skilling indicated our concern is we have setbacks for a reason and you could meet them. If you can demonstrate that you need this but we've already demonstrated that a 20 foot garage could fit there and meet the setback.

Mr. McCarver replied if I do a 20 foot garage, the width, then there will be 4 foot less from what I have now and I don't see where that's going to hurt. I don't see where that upsets them.

Ms. Turgon stated but if you don't meet the setback requirement, that's the requirements.

Ms. Skilling commented one of the requirements is a hardship of which the applicant complains is one suffered by the applicant rather than the neighbor. Everybody has to meet the setback requirements and I don't know what the conditions were for the applicant who did get a variance but we're reviewing this based on these conditions and what are your hardships?

Mr. McCarver responded I don't have a hardship and I don't even understand why you would ask me what hardship I have.

Ms. Skilling replied because the applicant has to demonstrate these things and I'll list them: the hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public, the hardship relates to the applicant's land rather than personal circumstances, and the hardship is unique or nearly so, rather than one shared by many surrounding properties.

Mr. McCarver questioned asking me if I have a hardship like that, like I have a disability or something.

Ms. Skilling responded I'm just saying those are some of the criteria.

Mr. McCarver replied I'm an able bodied, working person.

Mr. Thompson indicated it means that you're asking for a variance and if you can demonstrate you have a hardship or reason for asking for that we might be willing to approve it. And so far, just because you want a garage 24 by 24 is not considered a hardship. We have these rules and regulations set up for a reason, Town law, and your reasons aren't unique.

Mr. McCarver responded if it were anyone else in the same boat as I am that has a garage that is over the ten feet.

Ms. Skilling commented our response is other properties in the area were able to meet the ten foot side setback requirement when adding a garage. So the other criteria: not the result of the applicant's own action; it is your own actions, you can reduce it.

Mr. Malesh asked you said the owner of the house wasn't against it, what did you mean by that?

Mr. McCarver replied when I first talked to you (Mr. Jenkins), you said fine.

Mr. Jenkins responded all you did was mention it; you didn't tell me what you were going to do.

Indistinguishable arguing continued between Mr. McCarver and Mr. Jenkins.

Mr. McCarver stated it really doesn't matter. If I have to build a 20 foot by 24 foot garage I guess that's what I'll do but the day I spoke to you, you asked do you need a letter from me and I said it would be nice to have one and you said I'll talk to my wife. I said great and that was the end of the conversation.

More indistinguishable talking back and forth between Mr. McCarver and Mr. Jenkins.

Ms. Skilling interrupted excuse me, you'll have a chance to speak.

Mr. Malesh stated if you move the garage back to the end of the house then you could have 24 foot, whatever you want because you have room back there. It would be a little more driveway but there's no problem building a garage back there.

(Mrs. Jenkins was sworn in.)

Mrs. Terri Jenkins stated I reside at 149 Bayscape Drive and the reason I'm here tonight is because this building project is between our lot #67 and Mr. McCarver's lot #66. A copy of the plat is provided in the book. I would say we strongly oppose any variance that would increase any impervious surface for the following reasons. The first time, which he spoke to earlier that I did approve, was because I was uneducated about the process and I did not know about the driveway that was over to that side. There was an older gentleman there and he asked me how would I feel if he went over to that driveway and I

was uneducated and it has caused all kinds of issues between the neighbor and ourselves. Many times I would call the police and get other people involved. So I'm telling you from experience this will not work for us. Now I'll get into some of the particulars. What we have experienced on the other side by granting or signing off on some papers. I just want to mention with the plat, the interior plats are ninety three point three (93.3) in width and they run them back to back where you'll see when you look at the plat itself. We all have the same size lot. Currently the excess from the rain and groundwater from the impervious surfaces from their driveway and our two roofs both feed into a natural swale that carries the storm water to the storm drain at the stake. This is a swale that has been built up for twenty five (25) years, since I've been there. I've been there since before that road was paved. I've been there since there was no connection to 40 except down from Mill Creek Road. So I've been there a long time, went through a lot of storms in twenty-five (25) years. This swale is very noticeable, I don't know if it's very noticeable in the pictures but you can actually see the vee where it's cut down between these two properties. The swale runs alongside of the property line which is a few feet from the existing driveway at 143 Bayscape. So you can see on the pictures themselves, you can see where my property is up against the stake because I've been there for so long. I built my fence a foot in my property because I wanted to make sure I did the right thing. The swale runs right through here. You'll see later in these pictures what happens when we had a rain storm on the 12th of September. If you recall, the 12th of September was the last significant rainfall we've received. I remember that because my birthday was the next day so I recall it very vividly. It rained very hard, several times throughout the day, sometimes for ten, fifteen minutes. You're going to see from these pictures that by that evening the swale was overcome and by night we had whitecaps flowing down in between the two property lines. The majority of the runoff you can see at the setback, it was completely onto our property. The next day, there is a picture in there from the 13th of September and I'm showing you a picture of the interior of my fence. You can see there is standing water from the runoff that came down by the fence line so the water flows from the top of the fence line down to the road to the storm drain, just like it's supposed to. This proposed project to build and paved surfaces greatly reduces the absorption capacity of the land so with this you have increasing flooding and total saturation of our remaining natural resources. The swale will be altered with this project and will have the runoff solely on our property. With this kind of building there will be no sunlight; the sunlight will be diminished on that side of the house. It would never dry. I have moss that sits on the inside of my fence line now where there's continuous moisture sitting there and it will never dry on that side of the house. This action makes the entire proposed building project on us by diverting more water onto our property so that this resident can be afforded a two car garage. The resulting damages that could occur to our home far outweigh what this homeowner will spend on this build project. We could have a wet basement. Of course our basement is a finished basement. We could have mold and mildew like we have on the other side because we did the wrong thing. And foundation problems. The second issue I want to address is the noise. Again, noise can be defined as a loud sound; residential noise means any noise emitting from the home, or land use in connection with the home such as from a garage. The way to reduce the noise is to keep the noise source at a distance. This proposed building project constructed along the side yard are where two of our bedrooms, within twenty five (25) feet of where we sleep. Now I can understand not everybody works Monday through Friday, 9 to 5, but having said that the residents of 143 Bayscape are out there at 3 a.m. in the morning. I don't know about other people but we don't get up at 3 a.m. in the morning but we hear their morning routine, very loud, one car gets started, one person leaves, an hour passes, another starts up and leave. It's very loud.

Mr. Thompson commented I don't see how this has anything to do with this. Your point's well made. Everything else, the noise they make, what does that have to do with the garage.

Mrs. Jenkins responded it's a noise source, I'm just saying it can be reduced. I just wanted to bring that up. The other issue we have with the variance on the other side is the homeowner has extended into the setback so far they can't even get around back to their back yard and continually trespass on my yard all

the time to get back to that side of their yard and it's demonstrated by the way that they park and how they get out of their car. So it is very easy to see why they do that. I would like to also say to you we aren't the only ones who oppose this variance. We've had several people that have signed off opposing the variance and we have that included in the book. These are people to the side of us and to the back of us and all think this could affect them. In summary I just want to say again we strongly oppose. We were uneducated, again, for the first variance and we're a lot smarter now and we've had a bad experience. So we want to stop that before it gets started. The next person I'd like to bring up is Mr. John Seidle. He does a lot of odds and ends jobs for us and he can attest to the side yard being moist because he goes back there to do odds and ends jobs for us. We also have our attorney here with us this evening.

(Mr. Seidle was sworn in.)

Mr. Seidle, 29 Gilly Road, Perryville, commented I can attest to the water lying in the ditch and in the little swale. It lays there most of the year. Sometimes more and sometimes less, depending on the weather we have. I've been stuck in there a few times so I know not to go in there anymore. That's about all I have to say but the water is there.

(Mr. Dennis Clower was sworn in.)

Mr. Clower indicated I have an office address in Elkton and am the attorney for Mr. and Mrs. Jenkins. I have very little to add and don't want to waste your time. As has already been pointed out the deficiency of the application, clearly if there were any hardship in this matter at all, the hardship would occur to the neighbors if the variance was granted. And I congratulate you on your ordinance because frequently I've been doing this a long time and I see Boards of Appeals who do try to grant variances on basis of hardship and they get in personal hardship rather than dealing with what the law says, which is a hardship related to the land. You clearly do that distinction which I was prepared to do. And to us it has been pointed out that the garage can be built without a variance by moving it to the back. So the technical thing I want to do is to submit the evidence book on behalf of my clients and that no variance be granted as evidenced in direct.

Ms. Skilling stated I'm not going to read all the variance standards into the record because I think the final recommendation is most important to read from the Staff Report based on conditions, whether the evidence was there. It is recommended to deny the requested variance for the following reasons: 1. The variance request is based on a self-created condition, 2. The hardship is not unique to the subject property, 3. Nine (9) property owners in the immediate area who added either garages or additions met the setback requirement with only one (1) who received a variance in 2001. In 2001 that was prior to the existing zoning regulations that were updated in 2005. 4. The neighbor at 149 Bayscape Drive has concerns with storm water runoff that is directed between homes and the possibility of flooding to his property. There are swales that were put in as part of storm water requirements to help channel water and there are things you can do. Storm water regulations now are pretty strict on residential property and so we don't want to create another issue of additional runoff, 5. All roof runoff, even if he does do a smaller garage, must remain on site by directing water to a rain garden, dry well, or rain barrel to be compliant with current storm water regulations. Runoff off of a roof is pretty substantial; any pitched roof water comes down quick and now that runoff needs to be directed to proper channels, either put it in a rain garden or something to be able to channel that water so it can infiltrate into the ground and not substantially running off, and 6. Reducing the width of the proposed garage to meet the setback requirements provides enough space for 2 vehicles. The Staff Report with all attachments shall be entered into the record.

Ms. Turgon asked if Mr. McCarver decided to build a smaller garage does he still need to come before Planning & Zoning.

Ms. Skilling responded if he meets the standard setback requirement he just needs to bring in garage plans, we would look at the setbacks and could issue a Zoning Certificate and determine what he needed to do to keep the roof runoff. He could move it back further, I believe you're going to take down a structure, move it back a little further which would give you a little more area for runoff. Those are some things you need to consider. We would look at that proposal just like we do for everything, garages, sheds, we never allow them in drainage swales or in easements, so we would look at this requirement and Ms. Battaglia has talked to the applicant for how to meet the setback and to reduce the size.

Mr. McCarver stated I want to do an attached. So it would be 20 foot wide and I can go deeper in my back yard.

Mr. Malesh indicated if you do want a driveway you may want to consider chip and run rather than asphalt to let the water seep in because we know it will create runoff. That may be a thought for you and it's cheaper.

Mr. McCarver responded the most water I've seen where they're talking about, I don't know if their pool busted or what but I had water all in my backyard.

Mr. Malesh replied a lot of times with the drainage from the house, where the storm drains go, and with a garage up there you'll have to direct that, so you'll have both.

Ms. Skilling commented if you want some suggestions we do have designs of some best management practices (BMPs) that you can use that will help reduce your runoff and keep it on your property. That's the goals, our goals, and it's also State law. We'd work with you to look at some of those BMPs.

Motion made by Mr. Thompson and seconded by Mr. Salmon to deny V2015-01 variance from the side setback requirement by the applicant Mr. David McCarver at 143 Bayscape Drive and request Town Council to prepare a resolution making appropriate findings.

Mr. McCarver stated my driveway is 23 feet wide and my garage will be a foot past that, I don't see a real issue.

Mr. Thompson indicated your driveway is in the setback which adds to water runoff.

Ms. Skilling commented a permanent structure like with your building is a little different. It really probably shouldn't have been there but it's not considered a structure.

Mr. McCarver stated I just want to say that I thought up to this point we were all friends.

Indistinguishable talking continued.

Ms. Skilling interrupted we need to finish here and I just have one thing to say and I only say this because people are always complaining about everything else, when you live in a town you need to learn to get along. As a Planning Director in this town I can tell you it's very important to do that.

Indistinguishable talking continued.

Mr. Thompson interrupted we need to finish this, there is a motion on the floor.

(Repeated) **Motion** made by Mr. Thompson and seconded by Mr. Salmon regarding V2015-01 variance from the side setback requirement by the applicant Mr. David McCarver at 143 Bayscape Drive to deny the request and request Town Council to prepare a resolution making appropriate findings. **All in Favor. Motion Passed.**

ADJOURNMENT:

Motion made by Mr. Thompson and seconded by Mr. Malesh to adjourn the hearing at 8:01 p.m. **All in Favor: Motion Carried.**

Respectfully submitted,

Dianna M. Battaglia
Planning & Zoning Coordinator