



THE COMMISSIONERS OF ST. MICHAELS

BOARD OF ZONING APPEALS
300 MILL STREET
P.O. BOX 206
ST. MICHAELS, MD 21663

SETTLED 1670-1680

INCORPORATED 1804

TELEPHONE: 410.745.9535

FACSIMILE: 410.745.3463

AGENDA

Monday, January 11, 2021

Virtual Meeting

5:30 PM

Subject to Change

- I. CALL TO ORDER
- II. APPROVAL OF MINUTES
November 17, 2020
- III. OLD BUSINESS – Continued from November 17, 2020
BOZA-20-601: Variance side yard setback requirements per Chapter §340-104 of the Code of St. Michaels. Application is for the placement of an addition at 103 E Chew Avenue, (Tax map 0201, parcel 1394) for owners Franz Bogner & Angeline Sturgis.
- IV. MATTERS FROM THE COMMISSION AND STAFF
- V. ADJOURNMENT



THE COMMISSIONERS OF ST. MICHAELS

BOARD OF ZONING APPEALS

300 MILL STREET

P.O. BOX 206

ST. MICHAELS, MD 21663

SETTLED 1670-1680

INCORPORATED 1804

TELEPHONE: 410.745.9535

FACSIMILE: 410.745.3463

Property Owners: Franz Bogner & Angeline Sturgis
 Applicant(s): Lee Weldon
 Case No.: BOZA-20-601
 Property Location: 103 E Chew Avenue, St. Michaels, MD
 (Tax Map 0201, Parcel 1394)
 Filing Date: October 24, 2020
 Hearing Dates: November 17, 2020 and January 11, 2021
 Decision Date: January 11, 2021

OPINION AND DECISION

Vice Chairman J. Douglas Rollow presided over the hearing on January 11, 2021 which was a virtual meeting held via Zoom, and a continuation of the hearing commenced on November 17, 2020. Members Maurice Nelson and Bradley Hower were in attendance for each of the hearings and the deliberations on this matter. Franz Bogner, Angeline Sturgis, and Lee Weldon were present at the hearings. Planning and Zoning Officer Kymberly Kudla was also present at the hearings. The hearing on November 17, 2020 commenced at 5:30 pm on that date and was immediately adjourned until January 11, 2021 at the request of the Applicants. The January 11, 2021 hearing before the Board commenced at 5:30pm and concluded at 6:14pm on that date.

I. Introduction

This case arises out of an Application for a variance filed by Lee Weldon of Chesapeake Green Design, INC. on behalf of Franz Bogner & Angeline Sturgis, property owners (the "Applicants"). Application No. 20-601 (the "Application") is for a variance from 6' with 15' aggregate side setback for the placement of an addition for a first-floor bedroom located at 103 E Chew Avenue (Tax Map 201, Parcel 1394).

II. Jurisdiction

The Board of Zoning Appeals (the "Board"), pursuant to Town Code (the "Town Code"), Articles VIII (Board Procedure) and IX (Board Powers and Duties), is empowered, upon written application therefor, to authorize upon appeal in specific cases a variance from the terms of

Chapter 340 of the Town Code. A public hearing must be held, and the Board must make findings that all the requirements of §340-136 have been met.

III. Board Exhibits

The following exhibits were admitted as part of the public record:

1. Variance Application, filed on October 24, 2020.
2. Responses to variance request
3. Site Plan dated October 23, 2020
4. Aerial photo
5. Elevation drawings
6. Staff report prepared by Planning and Zoning Officer, dated October 28, 2020.
7. Written property excerpt from Maryland Department of Assessments and Taxation.
8. Notice of Public Hearing.
9. Certification of public notice publication dated November 4, 2020 and November 11, 2020.
10. List of adjacent property owners notified.
11. Affidavit of property posting.
12. Letter of Objection from 101 E Chew Ave.
13. Letter of reversal of objection from 101 E Chew Ave.

IV. Notice

A complete Application was filed on October 24, 2020 (Exhibit 1) with written testimony from the Applicant in response to §340-136 of the Town Code (Exhibit 2). Notice of the Public Hearing was published in the Star Democrat, a mid-shore periodical, on November 4, 2020 and November 11, 2020 (Exhibit 9). The Applicant also signed an Affidavit of property posting (Exhibit 11) on November 3, 2020. Vice Chairman Rollow swore in Applicants and Lee Weldon. The Board confirmed that Members have visited the site. No additional exhibits or testimony were requested by the Board prior to the hearing.

V. Standards for granting of a Variance.

Vice Chairman Rollow stated for the record that in order for the Board to grant a variance, the Application must satisfy the criteria in §340-136 of the Town Code, which requires:

- 1) Special conditions and/or circumstances exist which are peculiar to the land, structures or building involved that are not generally shared by other properties in the same zoning district or vicinity. Such conditions and/or circumstances may include but are not limited to the following: exceptional narrowness or shallowness or both, or irregular shape or topography of the property; unusual and limiting features of the building.
- 2) That such special conditions and/or circumstances noted above cause the strict enforcement of the zoning provision to impact disproportionately upon the property

resulting in unnecessary and undue hardship. Hardship arises where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions.

- 3) Such special conditions or circumstances must not be the result of any action or actions of the applicant.
- 4) Granting of the variance must be in harmony with the general purpose and intent of Chapter 340 and must not be injurious to adjacent property, the character of the neighborhood or the public welfare.
- 5) The variance granted must be the minimum necessary to afford relief.
- 6) That no nonconforming use of neighboring lands, structures, or buildings in the same zone, and no permitted use of lands, structures, or buildings in other zones shall be considered grounds for the issuance of a variance.

VI. Testimony

Vice Chairman Rollow said that the record includes a statement by Mr. Weldon and a staff report from the Zoning Officer Kudla and invited them to comment. Ms. Kudla had no additional comments.

Mr. Weldon summarized the Applicants' application, which adds a small addition on the side of the property to allow for a first-floor bedroom. Currently a family room is being used as a bedroom which limits family space. Absent a variance, the bedroom would have to be built off the back of the house, which has been landscaped. Mr. Weldon said the Applicants feel that their plan is a reasonable compromise to maintain the streetscape and keep costs down.

Vice Chairman Rollow stated that the setbacks in the R-2 zone are minimum 6 feet, aggregate 15 feet. The original building, which predates the zoning code, is not in conformity with those setbacks but the existing addition to the house is in conformity.

Mr. Nelson asked the applicant to state the hardship on which the variance application is based. Mr. Bogner responded that the living area in the house is very small and the family room should be converted back to living space. That would require a new master bedroom and given the applicants' age that should be located on the first floor. Mr. Weldon stated that the lot size is not typical of the lots on Chew Street and even with the variance the property will have more "elbow room" than many of the houses on the street. Mr. Hower stated that circumstances of the other houses on the street were not relevant to this variance request.

There was no further comment from the Applicant.

VII. Deliberation and Findings

Vice Chairman Rollow opened discussion among the Members. Mr. Nelson stated that he did not see the hardship necessary to support the application. Mr. Hower stated that the property's situation was not a unique situation in St. Michaels. Vice Chairman Rollow stated that the circumstances to support the variance must be unique to the property. The lot is generously sized for R-2, it is rectangular, flat, and level. The question before the Board is whether a small incursion into the setback is permissible when there are alternatives, although less convenient and more expensive, that do not go into the setback. The objection and reversal of the objection by the adjacent landowner does not sway the Board. An agreement between adjacent landowners is not sufficient to justify a change in the setback. A variance to the setback runs with the land, with the structure, and is permanent. Private parties cannot agree between themselves to ignore the law. There being no further discussion among the Members, Vice Chairman Rollow called for a motion.

VIII. Decision

A motion was made to deny the variance as submitted in Variance Application BOZA-20-601 by Member Nelson and seconded by Member Hower. There was no further discussion. Vice Chairman Rollow called for a vote.

The vote was:

Rollow	<u>Deny</u>
Nelson	<u>Deny</u>
Hower	<u>Deny</u>

The motion carried by vote of 3:0 in favor and the Board of Zoning Appeals hereby ORDERS that Variance Application BOZA-20-601 is hereby DENIED.

Vice Chairman Rollow and Members present submit and adopt this Written Opinion and Decision on the day 29 of January, 2021.

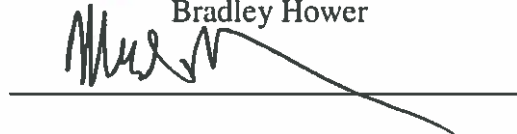
St. Michaels Board of Zoning Appeals



Vice Chairman, J. Douglas Rollow



Bradley Hower



Maurice Nelson