

IN THE MATTER OF
LINDA A. SENEZ

Legal Owner/Petitioner

341 Worton Road
Essex, MD 21221
15th Election District
6th Council District

RE: Petition for Variance

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 13-014-A

* * * * *

OPINION

This case comes to the Board on appeal of the final decision of the Office of Administrative Hearings in which the Administrative Law Judge denied a Petition for Variance seeking relief from Section §400.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an existing detached accessory structure to have a setback of 0’ in lieu of the minimum required 2.5’. After OAH denied the Petition, the Petitioner/Legal Owner, Linda A. Senez (the “Petitioner”), wrote a letter to OAH requesting that the Petition for Variance be amended to permit the canopy to have a setback of 2.0’ on the west side and 1.11’ on the east side.

A public hearing was held on February 28, 2013. The Petitioner was represented *pro se*. There were two (2) Protestants, Stephen Collins and Ann Collins, his wife, who reside at 339 Worton Road, Essex, MD 21221. The Protestants were also *pro se*. A Public Deliberation was held on March 20, 2013.

Factual Background

The Petitioner is the owner of the property located at 341 Worton Road, Essex, MD 21221 in Baltimore County (the “Property”). The Property is improved with a single

family dwelling with a detached garage. The Property is 50' wide and approximately 365' long. It is a rectangle shape, flat lot with a pier, fronting on Norman Creek. It is zoned D.R. 3.5.

At issue in this case is a framed canopy measuring 10'x 20' which serves as shelter for firewood and is anchored into her driveway. The Petitioner measured the distance of the canopy from the property line and stated that it 2'0" off at one end and 1'11" off at the other end. (Pet. Exh. 1D).

According to the Petitioner, the canopy comes is a standard size and comes in a kit. Petitioner had the canopy assembled. She testified that it would be costly to have the canopy reduced in size. She further stated she does not prefer the look of a tarp covering the firewood. The previous canopy that she had collapsed with the weather.

Petitioner testified that the current location of the canopy permits her vehicle as well as lawn equipment to fit through her gate. (Pet. Exhs. 1F and 1G). The Petitioner explained that due to the lot size, there is no other location on the Property for the canopy. Chesapeake Bay Critical Area regulations ("CBCA") prohibit the Petitioner from covering any additional ground on the Property. The Department of Environmental Protection and Sustainability ("DEPS") determined that the location of the canopy on the existing driveway is in compliance with CBCA regulations. (Pet. Exh. 1B).

Testifying in opposition to the Variance were Petitioner's neighbors, Stephen and Ann Collins. There is a long history of legal disputes between the Petitioner and the Collins, this case being no exception. The Protestants argued that the fence is not located on the property line. A survey prepared by Brian Dietz shows the property line to be about 1 foot from the fence. The Board was not presented with a copy of this survey. At

the center of their opposition is that the Petitioner previously objected to the location of the shed on their property. As a result, the Protestants had to move their shed 6 inches away from the property line. The Protestants did not submit any exhibits to the Board.

Decision

In order for the Petitioner to obtain approval for an area variance for the canopy, the Board must be convinced that the Petitioner has satisfied §307.1 of the BCZR which states, in pertinent part, as follows:

"...(T)he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area...regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare...."

This Board is guided by the holding provided by the Court of Special Appeals in *Cromwell v. Ward*, 102 Md. App. 691, 698 (1995), wherein the Court writes:

...The Baltimore County ordinance requires "conditions ...peculiar to the land...and...practical difficulty..." Both must exist. ...However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when the uniqueness is first established that we then concern ourselves with the practical difficulties...."

In requiring a finding of "uniqueness", the Court of Special Appeals in *Cromwell* referred to the definition of "uniqueness" provided in *North v. St. Mary's County*, 99 Md. App. 502, 514 (1993):

In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects in bearing or parting walls....

Id. at 710.

If the Property is determined to be "unique," then the issue is whether practical difficulties also exist. Toward this end, the Board acknowledges that an area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. *McLean v. Soley*, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must produce evidence to allow the following questions to be answered affirmatively:

1. Whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
2. Whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

However, the law is clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell, supra*, Judge Cathell noted:

Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

Id., at 722.

The Petitioner argued that the Property is unique because it is 50' wide lot which is not large enough to contain her garage and canopy without violating the setback lines. The Petitioner further argued that the CBCA regulations prevents her from moving the canopy to any other location because she is prohibited from covering any more land. The Petitioner contends that the size of the canopy is standard that it would be too costly to reduce in size.

After reviewing all of the testimony and evidence presented, the Board has determined that the Petitioner has failed to prove that the Property is unique or that she has suffered any practical difficulty which is not a self-imposed hardship. As a result, the variance is denied for the following reasons.

The Petitioner's Property is identical to other houses and lots in the neighborhood. Like the Petitioner's lot, the lots on Worton Road are 50' wide, flat, and shaped in the form of rectangles. Indeed, the aerial photograph submitted by Petitioner demonstrates the lack of uniqueness of her property in comparison to others in the neighborhood (Pet. Exh. 1C). Under *Cromwell*, there must be an inherent characteristic not shared by

other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. No evidence was presented as to these factors affecting the land.

The Court in *Cromwell*, citing *North v. St. Mary's, supra*. held that the “extent of improvements on the property” can not be the reason for uniqueness unless there are architectural features associated with the structure which prove “unique.” In respect to structures, it would relate to such characteristics as unusual architectural aspects in bearing or partition walls.... *Id.* at 710. No evidence was presented as to any particular architectural features associated with the canopy. To the contrary, Petitioner had it erected in 2010 from a kit which she purchased.

While the Board has determined that there is no uniqueness with regard to the Petitioner’s land and therefore the issue of practical difficulty need not be addressed, if the Board did address the issue of practical difficulty, it would have found that the Petitioner’s professed practical difficulty is based solely on the self-imposed hardship of erecting a canopy without first obtaining a variance. Financial hardship incurred in reducing the size of the canopy, or the cost incurred in pursuing a variance request, are not the type of hardships envisioned by *Cromwell*. The Board finds that the Petitioner is not prevented from using her canopy, notwithstanding the fact that, according to her own sketch the additional 6” on one end and 7” on the other end may be more comfortable for movement of her vehicle or lawn equipment.

The Petitioners’ photographs reveal that she uses the canopy for not only covering the firewood but for storing what appears to be crates or furniture as well as trash cans. In

any event, the canopy extends beyond the width of the items needed to be covered. (Pet. Exh. 1F and 1G).

Accordingly, the Board finds that, based on the evidence presented, the Petitioner has failed to meet her burden of proof for a variance under BCZR, §400.1/

ORDER

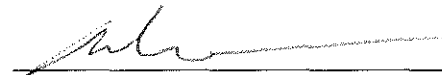
THEREFORE, IT IS THIS 10th day of April, 2013, by the County Board of Appeals of Baltimore County

ORDERED, that the Petition for Variance seeking relief from Section §400.1 of the Baltimore County Zoning Regulations to permit a canopy to be located within 2' 0" on the west end and 1' 11" on the east end in lieu of the required 2 ½ ' from the property line be, and the same is hereby **DENIED**.

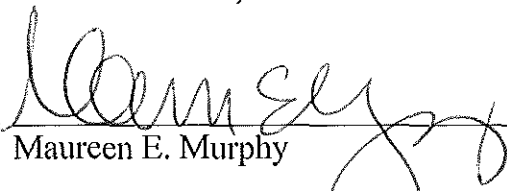
Any petition for judicial review from this decision must be made in accordance with Rule

7-201 through Rule 7-210 of the *Maryland Rules*.

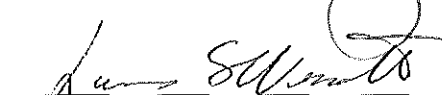
**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**



Andrew M. Belt, Chairman



Maureen E. Murphy



Lawrence S. Wescott



Board of Appeals of Baltimore County

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April 10, 2013

Linda Senez
341 Worton Road
Essex, MD 21221

Stephen and Ann Collins
339 Worton Road
Baltimore, MD 21221

RE: *In the Matter of: Linda Senez – Legal Owner/Petitioner*
Case No.: 13-014-A

Dear Ms. Senez and Mr. and Mrs. Collins.

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script that reads "Theresa Shelton/kc".

Theresa R. Shelton
Administrator

TRS/klc
Enclosure
Duplicate Original Cover Letter

c: Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
John E. Beverungen, Administrative Law Judge
Arnold Jablon, Director/PAI
Andrea Van Arsdale, Director/Department of Planning
Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law