

Maryland Board of Zoning Appeals

April 17, 2018

Board Member Phiefer called the meeting to order at 7:30 p.m. Those in attendance were Board Members Maher and Baker, Planning and Zoning Member Donald Scholl, Community Development Coordinator William Hardin, Town Attorney Robert Benson and Clerk of Council Fisher. Absent: Board Members J.R. Wells and Mary Gentry. Guest: James Libengood.

Called to Order

Board Member Phiefer called the meeting to order. Town Attorney Benson administered the Oath to everyone who will be offering testimony this evening.

New Business

James Libengood- Variance request for 200 E East St. and 202 E. East St. for the reduction of the minimum lot width size from 50 ft. to 45 ft. for each property.

Mr. Libengood identified himself and stated that he lives in Salisbury but owns both 200 and 202 E. East Street in Delmar, MD.

He presented to the Board Members a plat for titled lands for James Libengood. The plat is labeled as a re-subdivision plat dated February 12, 2018, which will be entered into the record. Town Attorney Benson informed Mr. Libengood that he would have to show cause as to his request for a variance. Mr. Libengood said that the property line runs down the center of the house at the 202 E. East Street property. He stated that he believed that the house is grandfathered in but there are 2 addresses at this location and he would like to move the property line so that the property is split in half with each property having a 45 ft. front width instead of the required 50 ft. width.

Board Member Phiefer asked how long Mr. Libengood has owned these properties. He responded that he has owned them for over 15 years. He stated that the property lines and setbacks for the property with the house have already been grandfathered in. He said that when he purchased the properties it was sold to him as 2 lots. He pays taxes for 2 lots as well as utilities for the 2 lots. He wants to sell the property with the house on it (202 E. East St) and has a buyer for it, but the perspective buyer is not interested in the additional property of 200 E. East St.. When he had the property surveyed for this potential sale, is when he was notified that the house straddles the property line. Board Member Phiefer stated that Mr. Libengood can't sell either property with the house sitting in the middle of the property line. The way Mr. Libengood has suggested will create 2 non-conforming properties. Board Member Phiefer suggested that Mr. Libengood move the property line just enough so that the property with the house (202 E. East Street) would be in compliance and not need a variance.

Mr. Libengood stated that he did not want to move the line an additional 5 ft. because it would create only a 40 ft. front width for 200 E. East Street which would make it hard for him to sell it, since it would possibly be too small for anyone to build on it with the

required setbacks. Board Member Phiefer said that even with a 45 ft. width, it would be hard for anyone to build on it.

Town Attorney Benson said that there is an existing situation at 200 and 202 E. East Street. The house is on 202 E. East St, but the property line splits the house in half. Mr. Libengood is asking for a re-subdivision. With the proposed re-subdivision, Mr. Libengood is now creating 2 non-conforming lots. The existing house is divided by the lot line. He has to move the lot line for 202 E. East Street and in doing so creates a problem because the Zoning Regulations requires the front width of a lot to be a minimum of 50 ft. The combination of the 2 lots is not enough to create 2 lots with at least 50 ft. widths. Because he is asking to make this change the lot width of the house needs to be 50 ft. to match the requirements. So, Mr. Libengood is asking for a variance for both property lots.

Community Development Coordinator Hardin said that have spoken with the Town Administration and they were under the notion that the house would still remain grandfathered in since it wasn't being moved or altered. Just the line would be moved. The recommendation that was made by the Town was to reduce 202 E. East St. to a 40 ft. width and to expand 200 E. East St. to 50 ft. Mr. Libengood said that this is something that he did not want to consider.

CDC Hardin stated that Mr. Libengood has been informed that he had the burden of proof for the presentation of evidence to the Board. CDC Hardin also cited the four circumstances in which a variance could be granted based on hardship; 1) by reason of exceptional narrowness, shallowness, or unusual shape of a specific piece of property, or by reason of exceptional topographic conditions or other extraordinary situation or condition of a piece of property; 2) where the literal enforcement of the requirements would involve practical difficulty or would cause unnecessary hardship; 3) a variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same zoning district and in the same vicinity; 4) that the authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the purpose of this chapter.

Board Member Phiefer asked Mr. Libengood if he has considered any of the alternative recommendations made to him. He said that he is not in favor of the suggested recommendations because it would cause the lot without the house to be too small for a house to be built on it. The hardship for him is that he would not be able to sell that piece of property. He stated that he wants to move the property line right down the middle of both properties.

Board Member Baker stated that for all purposes this is one lot because of the existing house. Mr. Libenood is asking the Board to create 2 non-conforming lots out of one. With the house sitting in the middle of the line, Board Member Barker said that this is telling him that Mr. Libengood wants to do this for monetary gain.

Board Member Phiefer stated that she was not comfortable with granting this variance. Board Member Maher agreed with her.

Board Member Baker made a motion that based on the information provided by Mr. Libengood and the information in the packets, to deny the variance request based on what the applicant is requesting. Board Member Maher seconded the motion which passed with 3 ayes and 2 absent.

Adjournment

Board Member Maher made a motion for adjournment which was seconded by Board Member Baker. The motion passed with 3 ayes and 2 absent.

Submitted by

Cindy Fisher
Clerk of Council