Debra Wiley

From: Peter Max Zimmerman
Sent: Friday, August 13, 2021 1:36 PM
To: Administrative Hearings; Maureen E Murphy
Cc: Dino La Fiandra; Jeffrey N Perlow; Jenifer G. Nugent; Peter Gutwald; John Bryan
Subject: Mathematics correction --- Zoning Case No. 20121-109-A, 11 Lynbrook Road, Lucky Star

Dear Judge Murphy,

Please accept this algebraic mathematical correction. At the scale of 1 inch = 30 feet on the site plan, my ruler measurement of 1/8 inch for the distance the front of the garage extends beyond the rear boundary of the side wall foundation wall should be corrected to 3.75 feet rather than 2.4 feet. 1/8 (inch) x 30 (feet per inch) = X. X = 3.75.

This does not change the legal analysis. It just means that the garage extends further into the side yard than I previously assumed and said.

Please, therefore, accept this correction of my rusty algebra, which came to mind after I sent the previous e-mail about an hour ago.

Peter Max Zimmerman, People's Counsel 410 887-2188

Debra Wiley

From: Peter Max Zimmerman
Sent: Friday, August 13, 2021 12:38 PM
To: Administrative Hearings; Maureen E Murphy
Cc: Dino La Fiandra; Jeffrey N Perlow; Jenifer G. Nugent; Steve Lafferty; Peter Gutwald; John Bryan
Subject: Zoning Case 2021-109-SPH; 11 Lynbrook Road; Lucky Star<LLC, Peitioner

Dear Judge Murphy,

Upon receipt of Mr. Dino LaFiandra's response, I need to reply and respectfully add or clarify my reasons for disagreement particularly with his argument in the last paragraph of his letter. He there argues that there is no need for a locational variance for the garage. I contend that it is located partly in the side yard rather than "only in the rear yard," as required under BCZR Sec. 400.1. This turns out to be another issue of significance and public interest. To support his argument that the garage is not in the side yard, Mr. LaFiandra cites the BCZR Sec. 101.1 definition of YARD, SIDE and refers therein to the location of the of the rear foundation wall of the main building. Here is the definition of YARD, SIDE :

> " A yard extending from the front yard to the rear yard, between the side lot line and the side foundation wall of the main building."

The site plan, if accurate, shows a 48.29' x 24.41 rectangle as the front part of the dwelling, which rectangle then extends rearward with an unnamed connected rear addition or extension of 7.5' (1/4 inch on the site plan, measured by ruler, the length then calculated at the stated scale of 1"=30 feet) having the same width as the rest of the building, and with an apparent staircase. This looks to have side and rear walls of normal height.

There is then shown a brick patio extending another 15' back (1/2 inch, measured by ruler) for half the width of the rear extension. As a result, the length of the entire structure may be calculated as 73.5 feet. The site plan states, as to the brick patio, "TBR". I will assume this means "To Be Removed." Because the garage has already been constructed, the patio should already correlatively have been removed. I do not know if this has happened. Anyway, I will address the situation either way.

The brings me to the 1143 square feet garage structure. As shown, it is located about 2.4 feet in length (1/8 inch on the plan at 1' =30 feet scale as measured by ruler) to the side of the side building foundation wall, including the rear addition. In other words, its front extends into the side yard 2.4 feet forward of the rear boundary of the side building wall foundation of the main building. Even if the garage crosses the line of the side foundation wall by a single millimeter, it is then partially in the side yard and not "only in the rear yard," as required by BCZR Sec. 400.1. This is a bright line situation. As in baseball or tennis, if the ball is out by even a millimeter, sometimes necessitating video review, then the ball is out. In football (world soccer), it sometimes requires Video Assistant Referee (VAR) review to show whether the ball is over the goal line, even by a millimeter. In basketball, if the player's foot is slightly on the outside line of the court, then he or she is out of bounds. We can add a plethora of other examples. (I have not included in my calculation the front and side concrete pad shown for the garage. It is unclear how this differs from the driveway. If this is considered an effective part of the garage, the side yard location then looks to extend about 7 feet, just about the length of the rear addition.)

In other words, in order to be in the side yard here does not mean the location of the garage has to be entirely in the side yard or any particular fraction. As long as the side yard location is greater than zero, then it counts. It may be that if it were just an inch or two, nobody would notice in this context, as contrasted with tiny fractional measures in sports. But we are talking about at least 2.4 feet. This is not an insignificant number, especially when one keeps in mind that

the minimum side and rear setbacks from lot lines for accessory buildings are 2.5 feet. BCZR Sec. 400.1. If 2.4 feet were to be excused, then why not 3, 4, 5 or more. It's a slippery slope situation. To repeat, the law draws a clear line here.

My analysis reflects that the main building includes the addition. There should be no genuine dispute that what I call the "addition" or "extension" (or by any other name that fits) is part of the main building and that it has a side foundation wall. As for the definition of "main" building, there is no direct BCZR definition. But it is contextually and effectively to be deduced from the BCZR Sec. 101.1 definition of Accessory Building:

> "ACCESSORY BUILDING: One which is subordinate and customarily incidental to and on the same lot with a main building. A trailer shall not be considered an accessory building. A structure connected to a principal building by a covered passageway or with one wall in common shall not be considered an accessory building." Emphasis supplied.

This definition differentiates accessory from main buildings based on the simple fact of connection, even by one wall. It differentiates what is attached from what is detached. This means that an attached or connected structure, whether it be an addition, rear garage, solarium, patio, deck, pool house, barn are or become part of the main building, as opposed to being an accessory building. Even an attached carport --- front, side, or rear --- would be part of the main building because it would share at least one wall.

Furthermore, this addition, as with every such addition, garage, solarium, deck, patio, etc., whether enclosed or not, must have some foundation, whether natural or man-made. The Webster's Third New International Dictionary definition of "foundation," (2002, Page 898) includes:

> "**foundation:** ... *n.* ... **2 a** : the basis upon which something is founded : the basis upon which something stands or is supported .... **4 a :** an underlying natural or prepared base or support (the terrain ... has a gracefully undulating surface over a limestone --- (i.e foundation) .... **5:** a body of ground upon which something is built up or overlaid ..."

In sum, the garage as shown is in the side yard by at least 2.4 feet, that is to say, 2.4 feet forward of the side yard foundation wall of the main building extension. That is more than enough to require a variance in order to locate in the side yard in lieu of "only in the rear yard."

While it is unnecessary to reach the further question concerning the 15' longer brick patio (if not removed), it is quite possible that its edge construction may be viewed to include side foundation walls, whether short or tall. The Webster's Third New International Dictionary definition of **"Wall"** is quite broad and includes, Page 2572:

> "*n.* ... **6 a** the external layer of structural material surrounding an object ....**7 a** (1) something resembling a wall in appearance ...."

Moreover, there is no doubt that the brick patio has a foundation, whether natural or man-made.

* * *

In conclusion, this additional research and analysis confirms my observation that the garage is partly in the side yard. It is therefore necessary, in my opinion, that the petition be amended to include a request for side yard variance, and that this be another facet of the reconsideration and review process. Because this issue has become a matter of controversy, it will be of public interest to get it resolved, as well as the public interest issue of the application of BCZR Secs. 400.1 to 400.3 to the B.L. Zone and other zones in comparable positions.

Thank you in advance for your continuing attention to this case and my motion for reconsideration.

Peter Max Zimmerman, People's Counsel, 410 887-2188

Debra Wiley

From: Peter Max Zimmerman
Sent: Wednesday, August 11, 2021 1:04 PM
To: Maureen E Murphy; Administrative Hearings
Cc: Dino La Fiandra; Jeffrey N Perlow; Jenifer G. Nugent; Steve Lafferty; John Bryan
Subject: Zoning Case No. 21-109-A, 11 Lynbrook Road, additional citation for Motion for Reconsideration

Follow Up Flag: Follow up
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Dear Judge Murphy,

After I filed my office's motion for reconsideration on August 9, Zoning Supervisor Jeffrey Perlow reminded me also of BCZR Sec. 1B01.1.A.18, particularly subsection g.

This, of course, is the D.R. Zone permitted use by right provision which specifically addresses accessory buildings in D.R. Zones, including garages and other accessory buildings and structures subject to BCZR Sec. 400.
It brings to mind also that similar provisions are in several of the R.C. residential zones, such as Sec. 1A03.3.A.9 .f for the R.C. 4 Zone and Sec. 1A04.2.A.11.f for the R.C. 5 Zone.

While our argument does not depend on these provisions, they reinforce even more explicitly the point that the B.L. Zone incorporation of the D.R. Zone uses permitted and as limited per BCZR Sec. 230.1.A.1 effectively engrafts the D.R. Zone accessory building provisions, along with the incorporated permitted dwelling use. Therefore, BCZR Secs. 400.1 to 400.3 apply.

I thank Jeff Perlow once again for his contributions here.

Respectfully, Peter Max Zimmerman, People's Counsel, 410 887-2188