IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(11 Lynbrook Road)		
15th Election District	*	OFFICE OF ADMINISTRATIVE
7th Council District		
Lucky Star, LLC	*	HEARINGS OF
Legal Owner	*	BALTIMORE COUNTY
Petitioner	*	**CASE NO: 2021-0109-A**

* * * * * * * * *

ORDER ON MOTION FOR RECONSIDERATION

Now pending is a Motion for Reconsideration filed by People's Counsel for Baltimore County dated August 9, 2021 in regard to the July 20, 2021 Order issued in the above case. On August 11, 2021, People's Counsel supplemented his Motion with additional arguments. The same day, Counsel for Petitioner filed a Response to the Motion. On August 13, 2021, People's Counsel filed a Reply to Petitioner's Response to the Motion. Later that day, People's Counsel, sent an email correcting his mathematical errors in regard to his calculations of the side yard. As a result of the most recent filing date by People's Counsel, the undersigned views the Motion for Reconsideration as ripe for a decision within 30 days of August 13, 2021 under Rule 4K of the Rules of Practice and Procedure. To do otherwise would be to ignore People's Counsel's mathematical correction filed on August 13, 2021.

People's Counsel contends that the height of a detached garage in a BL zone is controlled by BCZR, §400.3 because the Property is located next to a DR16 zone. In short, the issue here comes down to an extra 5 ft. in height of the garage. It meets the 40 ft. height for a BL zone, but not the 15 ft. height for a residential zone. To support his cause, People's Counsel relies upon BCZR, §230.1.A.1 which states as follows:

A. The following uses only are permitted (See Section 230.2.):

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> 1. Uses permitted and as limited in the residential zone immediately adjoining, except that animal boarding place, Class A, is permitted only as a special exception and kennel is prohibited.

While no legal authority is provided, People's Counsel infers that the phrase "uses permitted and as limited in the residential zone immediately adjoining" above supports his conclusion that "the adjoining zone [DR16] is essentially incorporated and grafted, so that the [BL] zone becomes a hybrid business/residence zone." BCZR, §230.1.A.1 is not the answer that People's Counsel hopes it is, as that Section simply states - that 'residential uses' are permitted in BL zones. In addition, contrary to People's Counsel's assertion, this Property was not granted residential use "by virtue of incorporation from the adjoining residential zone uses." Rather, the primary building on the Property was built in or about 1929, long before the enactment of the BCZR. This fact is clear from the SDAT Real Property Data Exhibit which People's Counsel attached to his Motion.

People's Counsel next looks to BCZR, §232, which Section is entitled '*BL Zone Area Regulations.*' That Section refers to BCZR, §302 which is aptly titled: *'Height and Area Regulations for New **Residences** in Business and Manufacturing Zones.'* Specifically, BCZR, §302.1 is for new residences which have not yet been built:

> **§ 302.1. - Adherence to regulations for adjoining zone.**
>
> ***Residences hereafter erected in business and manufacturing zones*** shall be governed by all height and area regulations for the predominant residence zone which immediately adjoins, or by D.R.5.5 Zone.

Thus, by its express wording, BCZR, §302.1 cannot apply here because this Petition does not involve the construction of a residence. This Section would apply where residences will be constructed in a business or manufacturing zone. (See *In the Matter of 1301 Pulaski Highway, LLC*, Case No.: CBA-19-002 (HOH Case No.: 11-1041 (construction of 150 townhomes in BR

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zone was within the density which is permitted in the adjoining DR 5.5 zone pursuant to BCZR, §230.1.A.1).

Additionally, People's Counsel's view that a decision rendering the Petition for Variance moot "amounts to a special hearing determination" is nonsensical. The decision was made on the relief requested. Whether by Petition for Variance relief from the residential height requirements, or by Petition for Special Hearing to find that those height requirements did not apply to commercial property, *the issue to be decided* is the height of the garage. The file reflects that notice to the public was legally provided pursuant to BCC, §32-3-302. (See Certification for Sign Posting and Recertification, and Newspaper Publication as contained in file).

Moreover, it is a mischaracterization to describe the County Council's BL zoning designation on this Property as a 'residence zone' with a 'nonresidential label.' The Petitioner is entitled to rely upon the BL zoning on this Property until and unless the County Council changes it. It is not insignificant zoning designation. Indeed, Mr. Richardson testified that the prior owner used the Property for commercial storage. The essence of the Motion centers on the fact that, presently, the primary building is currently under lease as a residence. By right, the primary building and garage, can be used/leased by the Petitioner as an office or a business use. The Property is surrounded by commercial or industrial uses on BL land to the north, and on BR and ML-IM zoned land to the west. (Pet. Ex. 2). The Motion emphasizes that Office of Zoning Review (OZR) agrees with the position that the residential height standard should apply to this garage. Yet, the OZR accepted the BL front, side yard, and rear setbacks delineated on the Site Plan. This appears to be an inconsistent position.

People's Counsel next takes issues with the Petitioner's testimony during the hearing that the garage would be used in part, for commercial purposes (i.e. as storage of dry goods for her tea

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business). Toward that end, People's Counsel attached to the Motion permit information. Because those documents were not presented in evidence in this case, they will not be reviewed at this stage, particularly given that People's Counsel entered his appearance in this case on May 26, 2021, but did not participate in the hearing.

In response to the application of the residential standards contained in BCZR, §400.1-400.3, the Petitioner unfortunately did not provide any substantive legal analysis to counter the arguments raised in the Motion. Admittedly, Petitioner seeks the "path of least resistance" undoubtedly because the cost of this process for the Petitioner (and now with the addition of this Motion for Reconsideration in the name of "public interest") has become exorbitant. Accordingly, I do not agree with People's Counsel's legal analysis above and will not grant his Motion for the reasons he contends. Based on the arguments presented, I am not prepared to issue a universal ruling that BCZR, §§400.1-400.3 apply to BL zoned properties other than what is expressly stated in BCZR.

I will, however, grant the Motion based on the specific facts here. People's Counsel correctly points out that Note 3 on the Site Plan lists "Existing Use as "Residence" and "Proposed Use" as "Residence W/Garage". (Pet. Ex. 1). The garage is labeled on the Site Plan as "Residential Garage." A review of the testimony at the hearing confirmed that this Petitioner will also use the detached garage for personal, residential storage of a boat(s). Additionally, while the testimony at the hearing referred entirely to BL zoning, the Petitioner's Response to the Motion now recognizes that the Property is actually split-zoned, the majority of the Property zoned BL, but a strip on the southern side zoned DR 16. It is clear now that this split-zoning designation is depicted on the Site Plan. Because this evidence was not clear at the hearing, the Motion for Reconsideration will be granted based on this Petitioner's designated residential use of this garage.

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To address the issue of the burden of proof on the variance relief, there is no need for an additional hearing. Petitioner, through its expert, Rick Richardson testified that the Property was uniquely shaped - a narrow yet deep Property - with the western end wider than the eastern end. (Pet. Ex. 1). Unlike neighboring properties, the Property has a floodplain running through the entire width of the rear yard. (Pet. Ex. 1). The additional 5 ft. garage height here is needed to store boat(s) on trailer(s) and to accommodate a 20x40 ft. container of tea which is delivered from Taiwan.

I find that, because of the size and shape of the Property, the Petitioner will suffer a practical difficulty in not being able to have a detached garage in the rear yard, with this size and height, adequate for boat storage or otherwise. The roof line on the detached garage matches the roof pitch on the primary building. I also find that the requested variance relief can be granted in strict harmony with the spirit and intent of the BCZR and without injury to the health, safety or general welfare, particularly in light of the lack of opposition.

Finally, with regard to People's Counsel's contention that the Petitioner also needed a side yard setback Variance under the residential standards in BCZR, §400.1, on the premise that the garage is partially in the side yard, on this point, I agree with the Petitioner's analysis. BCZR, §101.1 definition of 'rear yard' which is 'a yard extending across the full width of the lot between the rear lot line and the rear foundation of main building. The location of the garage meets this definition. Conversely, the garage is not located within the "side yard" as defined in BCZR, §101.1 because the side yard is: "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." Accordingly, I find that the Petitioner does not need a side yard variance.

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In the alternative, and in the interest of judicial economy, in the event that a side yard Variance is required by an appellate court, the Petition is amended to reflect that Variance as such relief concerns the same garage at issue. I find that given the Property's uniqueness as above, the Petitioner would suffer a practical difficulty in not being able to have a garage at the proposed width, in its present location, which size and location are needed to accommodate double garage bays for the proposed personal and commercial use.

THEREFORE, IT IS ORDERED this **9th** day of **September, 2021**, by this Administrative Law Judge that the Motion for Reconsideration is hereby GRANTED based on this Petitioner's residential use of the proposed garage as reflected in the Site Plan (Pet. Ex. 1).

AND IT IS FURTHER ORDERED, that the Petition for Variance to allow a height of 20 ft in lieu of the permitted 15 ft. under BCZR, §400.3, be and it is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.

2. Petitioner and subsequent owners shall not convert the garage into a dwelling unit or apartment. The proposed garage shall not contain any sleeping quarters, living area, kitchen or bathroom facilities.

3. The proposed garage may be used for commercial purposes.

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Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Maureen E. Murphy

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlw

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By D Mignon

JOHN A. OLSZEWSKI, JR.
County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
MAUREEN E. MURPHY
Administrative Law

September 9, 2021

Dino LaFiandra, Esquire – dcl@lafiandralaw.com

RE: Order on Motion for Reconsideration
Case No. 2021-0109-A
Property: 11 Lynbrook Road

Dear Mr. LaFiandra:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

Pursuant to Baltimore County Code § 32-3-401(a), "a person aggrieved or feeling aggrieved" by this Decision and Order may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,

Maureen E. Murphy

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlm
Enclosure
C: Wai-Yi Lau and Jenni Lau – wai421@gmail.com
Patrick "Rick" Richardson – rick@richardsonengineering.net
Pete Zimmerman - People's Counsel –pzimmerman@baltimorecountymd.gov