IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(873 Ivy Hill Road)		
8th Election District	*	OFFICE OF ADMINISTRATIVE
2nd Council District		
Ivy Hill, LLC	*	HEARINGS OF
Legal Owner		
George Nyquist, Jr.	*	BALTIMORE COUNTY
Contract Purchaser/Lessee		
	*	**CASE NO. 2021-0264-A**
Petitioners		

* * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") as a Petition for Variance filed by the Petitioners, Ivy Hill, LLC and George Nyquist, Jr., for property located at 873 Ivy Hill Road. The Petitioners are requesting variance relief from the Baltimore County Zoning Regulations ("BCZR") §§ 400.1 and 400.3 to allow an accessory garage structure in the front yard in lieu of the required rear yard only. To allow an accessory structure to be 17 ft. tall in lieu of the permitted 15 ft.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. A site plan was marked and accepted into evidence as Petitioners' Exhibit 1.

A Substantive Zoning Advisory Committee ("ZAC") comment was received from the Department of Planning ("DOP"). They did not oppose the requested relief, subject to proposed conditions, which will be incorporated into the Order.

There were no protestants or interested citizens that appeared at the hearing. The Petitioner, George Nyquist, Jr., appeared at the hearing. Patrick "Rick" Richardson, Jr., of Richardson Engineering assisted the Petitioner at the hearing. The subject property is approximately 25.53 acres and is zoned RC 4. Mr. Richardson explained that the property has

ORDER RECEIVED FOR FILING
Date 12-9-21
By LW

challenging topography and is partially located within a riverine floodplain. He further explained that the proposed garage structure is situated in the front yard – to the side of the residence – in order to meet the 25' setback from the flood plain. The only aspect of the proposal that will be within the floodplain is the driveway. Mr. Richardson noted that a floodplain waiver for the construction of a tennis court has already been granted in Case No. 2019-0031-SPHA, and he argued that a driveway should not be considered to be "development," such that it would be prohibited in the floodplain under the Baltimore County Building Code, Part 125.1. However, as explained by ALJ Beverungen in the case above, the County Code has a broader prohibition on construction in the floodplain, as the Code prohibits any "development," which it defines as "any man-made change to improved or unimproved real estate including erection of buildings and other structures . . . grading, paving, clearing, excavation . . ." BCC § 32-8-101(g). Nevertheless, the ALJ granted the waiver for the construction of the tennis court (which Mr. Nyquist said has never been built) based on the unrebutted testimony of the engineer, Rich Richardson, that the court would have no negative impact on the floodplain. As in that case, Mr. Richardson has testified that the proposed driveway in this case will likewise not impact the floodplain. With regard to the variance, the property has already been found to be unique in the case above and I am bound by and concur with that finding. Mr. Nyquist explained that his residence was constructed in 1950 and has very little storage, which is part of the reason he wants to construct this garage. In addition he needs space for a workshop and game room.

A variance request involves a two-step process, summarized as follows:

(1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and

(2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

ORDER RECEIVED FOR FILING
Date 12-9-21
By DW

Cromwell v. Ward, 102 Md. App. 691 (1995).

As explained above, the site has already been found to be unique in a previous zoning case. I find that the Petitioner will suffer practical difficulty and hardship if the variance is denied because he would be unable to construct the garage he needs for storage and work and entertainment space. I further find that the construction of the garage, with the proper floodplain setbacks, on this 25 acre wooded site will not harm the public health, safety or welfare and that the relief is within the spirit and intent of the BCZR.

THEREFORE, IT IS ORDERED, this **9th** day of December **2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR §§ 400.1 and 400.3 to allow an accessory garage structure in the front yard in lieu of the required rear yard only. To allow an accessory structure to be 17 ft. tall in lieu of the permitted 15 ft. is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

- Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are 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, Petitioners would be required to return the subject property to its original condition.
- Petitioners or subsequent owners shall not convert the garage into a dwelling unit or apartment. The proposed garage shall not contain any sleeping quarters, living area, or kitchen facilities.
- There shall be no second utility meter(s).
- The proposed garage shall not be used for commercial purposes.

ORDER RECEIVED FOR FILING
Date 12-9-21
By DJ

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

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/dlm

ORDER RECEIVED FOR FILING
Date 12-9-21
By DW

JOHN A. OLSZEWSKI, JR.
County Executive

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

December 9, 2021

Mr. George S. Nyquist, Jr.
Ivy Hill, LLC – nikipro7@aol.com

RE: Petition for Variance
Case No. 2021-0264-A
Property: 873 Ivy Hill Road

Dear Mr. Nyquist:

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,

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:dlm
Enclosure

c: Patrick "Rick" Richardson, Jr. – rick@richardsonengineering.net