IN THE MATTER OF DANIEL J. and JENNIFER L. SALAK 21618 Orwig Road Freeland, Maryland 21053 7th Election District 3rd Council District	* * * * *	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY Case No.: 22-077-A

* * * * * * * * * * * * *

OPINION

This matter comes before the Board of Appeals for Baltimore County (the "Board") as a *de novo* appeal from the Administrative Law Judge's May 18, 2022 Opinion and Order denying the Petitioners, Daniel J. Salak and Jennifer L. Salak's ("Petitioners") Petition for Variance relief from BCZR §415.3.C.1 to permit: (1) The storage/parking of a utility trailer in the residential front half of the lot, in lieu of the rear half of the lot; and (2) the storage/parking of three (3) utility trailers, in lieu of the permitted one (1) per lot. The decision was appealed to this Board on October 13, 2022. A *de novo* hearing via Webex was held before this Board on September, 22, 2022. A public deliberation via Webex was held on October 20, 2022. Petitioners appeared *pro se*, with Carole S. Demilio, Deputy People's Counsel appearing on behalf of the Office of People's Counsel.

BACKGROUND

The gravamen of this case is a Code Enforcement Complaint filed with the Department of Permits, Approvals, and Inspections ("PAI"), Code Enforcement on December 3, 2021 (CC2118067), for trailers, recreational vehicles, commercial vehicles, and untagged vehicles on the Petitioners' property at 21618 Orwig Road, Freeland, Maryland 21053. On December 6, 2021, a Correction Notice was issued to remove open dump and junkyard conditions from the Property, to cease the outside storage of all unlicensed and inoperative motor vehicles, to properly

store the RV/utility trailers on the property, and to reduce the number of RV/utility trailers to only one on the Property or file for a variance. As revealed through the testimony of Petitioner Daniel J. Salak, Petitioners filed for variance relief. It was also revealed through the testimony of Mr. Salak that he followed the direction of the Zoning Office on how to style his Petition and explained he wasn't asking specifically for variance relief, but rather for clarification as to whether the trailers kept on his property are the type of trailers contemplated in BCZR §415.3.C.1. In opposition to the Petitioner's variance request, People's Counsel argued that the relief requested is not available procedurally as a variance pursuant to BCZR §307.1.

The property in question is 3.39 acres and is improved with a single-family home along with a detached garage measuring 1,223 square feet. Mr. Salak testified that the trailers at issue cannot be stored in the garage because it is filled to capacity due to the storage of his tools, equipment, snow mobiles and engines. The Property is zoned Resource Conservation – Agricultural (RC2) but is not used as a farm. The trailers on Mr. Salak's property consist of the following:

(1) A 2010 car trailer used to transport ATVs and farm equipment;
(2) A snowmobile tilt-trailer which can transport 2 snowmobiles;
(3) A snowmobile trailer which can transport 3-4 snowmobiles; and
(4) Hydraulic dump trailer used for hauling firewood.

VARIANCE RELIEF

BCZR §307.1. states in pertinent part:

§307.1 Authority to grant variance; procedures and restrictions.

The Zoning Commissioner of Baltimore County and the Count Board of Appeals, upon appeal, **shall have and they are hereby given the power to grant variances from height and area regulations,** from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is subject of the variance request and where strict compliance with Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. (emphasis added)

BCZR §415.3.C.1, the code section from which the Petitioners request variance relief states the following:

> Storage or parking of trailers or mobile homes.
>
> 1. In a residential zone, a trailer or mobile home may be stored or parked by the owner in a garage or other accessory building, or in the **rear half of a lot**, subject to the applicable side and rear setbacks, but in no caseless than **25 feet** from the property line. In no such case is residential occupancy permitted, **nor is more than one trailer** or mobile home permitted to be stored or parked on a residential lot. (emphasis added)

People's Counsel argues that the Petitioners' request for variance relief regarding the location and number of trailers on the Petitioners' property is not an available remedy as set forth in BCZR § 307.1 which limits such relief to height and area regulations. *See also Loyola Fed. Sav. & Loan Ass., v. Buschman*, 227 Md. 243 (1961). While the part of BCZR §415.3.C.1 addressing where a trailer can be located on a property may be eligible for variance relief in that it deals with "area regulations," relief requesting more than the permitted number of trailers on a given property is clearly not within the purview of BCZR §307.1.

Assuming, *arguendo*, that variance relief was available for any part of BCZR §415.3.C.1, no evidence was presented by the Petitioners in furtherance of satisfying the requirements enumerated in *Cromwell v. Ward*, 102 Md. App. 691 (1995) regarding uniqueness and practical difficulty. Consequently, the Petitioners' request for variance relief is denied.

SPECIAL HEARING RELIEF

During the hearing before this Board, Mr. Salak explained his Petition for Variance relief came as a result of the instructions given to him by Code Enforcement and County employees at the Zoning Office when he filed his Petition. Also, during the hearing, it came to light that the documents found in the Administrative Law Judge Hearing File did not represent the actual documents that he filed at the Zoning Office, further confusing the nature of the relief he was

requesting. In that the Petitioner clarified that his argument concerned the applicability of BCZR §415.3.C.1 to the type of trailer present on his property, the Board finds it is in the interest of judicial economy to view the Petitioners' case through the lens of a Petition for Special Hearing pursuant to BCZR §500.7. Such a procedural mechanism, akin to a Petition for Declaratory Judgement, will serve to inform both the Petitioners' and County Code Enforcement as to whether the Petitioners' trailers fall under the purview of BCZR §415.3.C.1.

BCZR §101.1 defines a "trailer" as follows:

> Any of the various type of nonautomotive vehicles that can be pulled or hauled by a truck or other motorized vehicle, consisting of a framed or flat platform, or a boxed structure, constructed on a steel chassis and fitted with wheels and designed to be transported to a location or place that may be a temporary or permanent site, for purposes other than as a dwelling or human habitation. A trailer shall still be regarded as such even though its mobility may have been eliminated by removing its wheels, or otherwise, and placing it on a stable foundation or rigid supports. A trailer included smaller structures transportable by a pickup truck or similar vehicle.

Mr. Salak offered into evidence several photographs of the trailers on his property. In addition to Mr. Salak's more general argument that the BCZR §415 was meant to address restriction on the presence of <u>residential</u> trailers on properties, Mr. Salak also contends that his trailers do not have "steel chasis" as referenced in the first sentence of the definition of "trailers" found in §101. While Mr. Salak is correct in his recitation of the language of the statute, this Board finds that the second sentence of the definition, which states, "A trailer includes smaller structures transportable by a pickup truck or similar vehicle," serves a catch-all for types of trailers not fitting the description found in the previous sentence. Accordingly, the Board finds that this sentence adequality describes the trailers found on the Petitioners' property, thus, limiting the permitted number of such trailers to one.

Assuming, *arguendo*, that the definition of "trailer" found in BCZR §101.1 does not apply to the trailers found on the Petitioners' property, these trailers may be more adequately described as a "recreational vehicle" for which storage of same is governed by BCZR §415 A.1.

BCZR §415 A.1. states in pertinent part:

> Contrary provisions of these regulations notwithstanding, **one recreational vehicle** may be stored on a residential lot as set forth below. . . (emphasis added)

To fully understand the parameters of the restrictions found in §415 A.1., we must investigate the definition of "recreational vehicle" found in BCZR § 101.1.

BCZR §101.1. defines "recreational vehicle and boat" as follows:

> A vehicular type unit which is primarily designed for recreation, camping or travel use, which either has its own motive power or is mounted on or drawn by another vehicle which, except for a boat kept in water, is not more than 35 feet in length and which, in general, is of such size and weight as not to require special highway movement permits when the driven or drawn by a passenger automobile or pick-up truck. The following shall be considered recreational vehicles.
> . . . E. TRAVEL TRAILER – **A vehicular portable unit mounted on wheels, designed to be towed by a passenger automobile or pick truck.** (emphasis added)

As was the case with the definition of "trailer," a good portion of the definition of "recreational vehicle and boat," at first blush, appears inapplicable to the trailers found on the Petitioners' property. Subsection (E), however, clearly describes the trailers at issue, which the Board finds to be governed §415 A.1. Accordingly, the number of such trailers permitted on the Petitioner's property is limited to one.

CONCLUSION

In that the Board finds variance relief is not available for the Petitioners pursuant to BCZR §307.1., their Petition for Variance is denied. Viewing the Petitioners request for relief through the lens of a Petition for Special Hearing pursuant to BCZR §500.7, this Board finds that the trailers present on the Petitioners' property fall within the purview of BCZR §415.3.C.1. as well as BCZR §415 A.1. restricting the Petitioners to one such trailer on their property.

ORDER

THEREFORE, IT IS THIS 14th day of November, 2022, by the Board of Appeals for Baltimore County,

ORDERED, that Petition for Variance relief from BCZR §415.3.C.1. to permit: (1) The storage/parking of a utility trailer in the residential front half of the lot, in lieu of the rear half of the lot; and (2) the storage/parking of three (3) utility trailers, in lieu of the permitted one (1) per lot, is **DENIED**; and it is further

ORDERED that Petition for Special Hearing to determine the applicability of BCZR §415.3.C.1. and BCZR §415 A.1. to the trailers located at 21618 Orwig Road, Freeland, Maryland 21053 is **DENIED**. The Board finds that the trailers at 21618 Orwig Road, Freeland, Maryland 21053 are within the purview of both Code Sections.

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*.

BOARD OF APPEALS
OF BALTIMORE COUNTY

Andrew M. Belt, Panel Chair

Sharonne R. Bonardi

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Board of Appeals of Baltimore County

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November 14, 2022

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Daniel J. and Jennifer L. Salak
21618 Orwig Road
Freeland, Maryland 21053

RE: In the Matter of: *Daniel J. and Jennifer L. Salak*
Case No.: 22-077-A

Dear Messrs. Zimmerman, Demilio and Salak:

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,

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Department of Planning
Adam Whitlock, Chief of Code Enforcement/PAI
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney/Office of Law
Ronald Danielson
Doreen Penderson