JOHN A. OLSZEWSKI, JR.
County Executive

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

May 18, 2022

Daniel J. Salak – danieljsalak@msn.com
Jennifer L. Salak
21618 Orwig Road
Freeland, MD 21053

RE: Petition for Variance
Case No. 2022-0077-A
Property: 21618 Orwig Road

Dear Petitioners:

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: PAI – Code Enforcement – paienforce@baltimorecountymd.gov

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(21618 Orwig Road)		
7th Election District	*	OFFICE OF ADMINISTRATIVE
3rd Council District		
Daniel and Jennifer Salak	*	HEARINGS OF
Legal Owners		
	*	BALTIMORE COUNTY
Petitioners	*	**CASE NO. 2022-0077-A**

* * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") as a Petition for Variance filed by Daniel and Jennifer Salak ("Petitioners") for property located at 21618 Orwig Road, Freeland (the "Property"). The Petitioners are requesting variance relief from Baltimore County Zoning Regulations ("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 or garage only storage/parking requirement and (2) the storage/parking of three (3) utility trailers, in lieu of the permitted one (1) per lot.

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. Petitioners appeared *pro se*. Neighboring property owners appeared and/or submitted written testimony in support of the Petitioners' requested relief. There were no Protestants or other interested persons in attendance.

Zoning Advisory Committee ("ZAC") comments were received from the Department of Planning ("DOP") and Department of Environmental Protection and Sustainability ("DEPS") which agencies did not oppose the requested relief. People's Counsel submitted a written memorandum in form of a letter dated April 8, 2022. The undersigned concurs with People's

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Counsel's analysis and incorporates and adopts that analysis herein.

This case originated from 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 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. A Code Enforcement hearing is scheduled on the violations on May 25, 2022. Photographs of the alleged violations taken by Code Enforcement are contained in the file.

The Property is 3.39 acres +/- and is improved with a single family home occupied by the Petitioners along with a detached garage measuring 1,223 sf which Petitioner refers to as his "shop." (Pet. Ex. 3). Street view photographs submitted by Petitioners show the trailers, RV and other equipment on the Property. Mr. Salak testified that the trailers at issue cannot be stored in the garage because apparently it is already filled with his tools, equipment, snow mobiles and engines which he works on. The Property is zoned Resource Conservation – Agricultural (RC2) although the Property is not used as a farm. (SDAT). According to the statement filed by Mr. Salak with the Petition, Mr. Salak owns 4 trailers which he identifies as 'utility trailers' as follows:

(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.

The sole issue in this case is whether Variance relief from BCZR, §415.3.C.1 can be granted to park 4 trailers on their residential property. BCZR, §415.3.C.1 reads as follows:

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C. 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 case less 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). The above provision is mandatory restriction of one (1) trailer OR one (1) mobile home per residential lot and cannot be waived or changed to suite a Petitioner's wishes. Moreover, BCZR, §307.1 limits the scope of variance relief to height and area regulations only and reads in pertinent part as follows:

> § 307.1. - Authority to grant variances; procedures and restrictions.
>
> The Zoning Commissioner of Baltimore County and the County 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 the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.

The express language of BCZR, §307.1 reads that OAH only has the authority to grant zoning variances from 'height and area regulations' due to unique physical characteristics relating to real property. Area Variances refer to setbacks from property boundary lines and minimum lot size requirements when physical improvements are proposed for a property. BCZR, §307.1 does not authorize Variance relief for personal property items such as trailers, vehicles or mobile homes. The express statutory intent of BCZR, §307.1 was reaffirmed by the appellate courts in *Cromwell*

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v. Ward, 102 Md. App. 691 (1995) and *Loyola Fed. Sav. & Loan Ass., v. Buschman*, 227 Md. 243 (1961).

In addition, even if the Petitioners could ask for a Variance here for personal property items, there was no evidence produced by the Petitioners related to the burden of proof required under *Cromwell*, *supra*. Additionally, the practical difficulty alleged by the Petitioners (i.e. desire to store trailers on the residential property) is not the type of practical difficulty required by the case law. The storage of more than one (1) trailer is merely for the convenience of the Petitioners which is contrary to the case law. In *Chesley v. Annapolis*, 933 A.2d 475, 176 Md. App. 413 (Md. App. 2007), the Court of Special Appeals relied on the Court of Appeals holding in *Belvoir Farms Homeowners Ass'n. Inc. v. North*, 355 Md. 259, 276, 734 A.2d 227 (1999), wherein the Court recognized that the purpose of zoning restrictions is "to prevent exceptions as far as possible," so that the specific need for the variance "must be substantial and urgent and not merely for the convenience of the applicant[.]" (citing *Carney v. City of Baltimore*, 201 Md. 130, 137, 93 A.2d 74 (1952)). The *Chelsey* Court emphasized the Court of Appeals' holding in *Belvoir Farms* in stating that: "it generally is not a hardship to be without a desired convenience or amenity on one's property, because zoning restrictions are to be enforced in the absence of a "substantial and urgent" need for a variance." *Id.* At 933 A.2d 488. (See *Belvoir Farms Homeowners Ass'n*, 355 Md. at 261, 734 A.2d 227). Finally, there is no practical difficulty here because the Petitioners have a 1,223 sf garage which could be used to store one or more trailers but the Petitioners chose not to use it for that purpose. For all these reasons, the Variance request must be denied.

THEREFORE, IT IS ORDERED, this **18th** day of **May, 2022**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR, §415.3.C.1 to permit the storage/parking of a utility trailer in the residential front half of the lot, in lieu of the rear half

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of the lot or garage only storage/parking requirement and to permit the storage/parking of three (3) utility trailers, in lieu of the permitted one (1) per lot are each hereby **DENIED**.

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/dlm

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