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| **IN RE: PETITION FOR SPECIAL HEARING AND VARIANCE** | * | **BEFORE THE** |
| | * | **OFFICE OF** |
| **(9402 Ryans Way)** | * | **ADMINISTRATIVE HEARINGS** |
| **10th Election District** **5th Council District** | * | **FOR BALTIMORE COUNTY** |
| | * | |
| **Carlos Levine** ***Owner/Petitioner*** | * | **Case No. 2022-0193-SPHA** |
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NOTICE OF APPEAL

Petitioner, Carlos Levine, by undersigned counsel, feeling aggrieved by the November 25, 2022 Opinion and Order in the above-captioned matter, which is attached hereto and incorporated herein as Exhibit A, hereby notes an appeal to the Baltimore County Board of Appeals. Appellants submit that the review by the County Board of Appeals from the final decision of the Office of Administrative Hearings shall be a *de novo* hearing pursuant to the Baltimore County Zoning Regulations and Charter.

Filed concurrently with this Notice of Appeal is a check made payable to Baltimore County to cover the costs of the appeal.

Respectfully submitted

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| 5th Council District | * | ADMINISTRATIVE HEARINGS |
| Carlos Levine | | |
| *Legal Owner* | * | FOR BALTIMORE COUNTY |
| **Petitioner** | * | **Case No. 2022-0193-SPHA** |

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**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings ("OAH") as Petitions for Special Hearing and Variance filed by legal owner, Carlos Levine (the "Petitioner") for the property located at 9402 Ryans Way, Perry Hall (the "Property"). A Special Hearing pursuant to the Baltimore County Zoning Regulations ("BCZR"), §500.7, was filed to allow an accessory structure (garage) to have a building footprint larger than the footprint of the principal home. In addition, Variance relief pursuant to BCZR, §400.3 to allow an accessory structure to have a height of 21 ft in lieu of the maximum allowed 15 ft.

Due to COVID-19, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Petitioner appeared at the hearing along with Lee Giroux, who is listed as the representative of the Petitioner on the Petition. Calvin Levine also appeared in support of the Petition.

Zoning Advisory Committee ("ZAC") comment was received from the Department of Planning ("DOP") and Development Plans Review ("DPR") which agencies did not oppose the relief.

The Property is 3.00 acres according to the State Department of Assessments and Taxation ("SDAT") and is improved with a 1,215 sf dwelling, with 600 sf finished basement, constructed

in 1962 ("SDAT"). Notwithstanding the SDAT information as to the size of the home, Petitioner testified that the home measures 2,880 sf due to additions on the home. Upon review of My Neighborhood Map and SDAT information, Petitioner purchased the Property on April 22, 2022. However, there are no building permits for this Property. My Neighborhood Map and SDAT information also indicate that the Property is not the primary residence of the Petitioner. The Petitioner's primary residence, and the mailing address for the Property at issue, is 9803 Kraft Hill Rd., Perry Hall, MD 21128.

The Property is zoned Density Residential – Honeygo Overlay District. (DR 1-H). The Honeygo Overlay District is imposed upon the DR zone in order to implement the Honeygo Area Plan which plan "ensures that the development of infrastructure coincides with the approval of building permits." My Neighborhood Map also reveals that the rear corner of the Property is traversed by a Big Gunpowder Falls and/or wetland area. Notwithstanding this stream, neither DPR nor Department of Public Works and Transportation ("DPW&T") provided any ZAC comment in regard to a possible floodplain and/or wetlands area, or how that stream may impact the proposed improvements on the Property. Notably, as shown on My Neighborhood Map, the Property is located at a dead-end. It is at the end of Ryan's Way and backs up to Honeygo Blvd. It is surrounded by residential properties.

The Petitioner made clear that he wants to build a 2-story, 3,694.31 sf, 21-foot tall detached garage to store 21 vehicles. Currently, Petitioner explained that he rents garages/storage space to store these vehicles and wants to save money by storing them at the Property. He stated that the size and height of the garage will allow him to stack the vehicles in order that all 21 vehicles would fit within the garage. On this point, the DOP ZAC comment provided information that the Petitioner operates an antique car business and needs the oversized garage to store all the vehicles.

(See File). When asked about this business, the Petitioner stated that he does not operate an antique car business.

SPECIAL HEARING

A hearing to request special zoning relief is proper under BCZR, §500.7 as follows:

> The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

"A request for special hearing is, in legal effect, a request for a declaratory judgment." *Antwerpen v. Baltimore County*, 163 Md. App. 194, 877 A.2d 1166, 1175 (2005). And, "the administrative practice in Baltimore County has been to determine whether the proposed Special Hearing would be compatible with the community and generally consistent with the spirit and intent of the regulations." *Kiesling v. Long*, Unreported Opinion, No. 1485, Md. App. (Sept. Term 2016).

I find that the requested garage with a footprint larger than existing home in the DR-1 H zone is not within the spirit and intent of the BCZR and the Special Hearing relief should be denied. The proposed oversized garage at the dead-end of Ryan's Way, surrounded by residential properties, combined with the DOP ZAC comment of an alleged car business, is concerning. It is illogical to believe that DOP fabricated the fact of Petitioner's antique car business because ultimately, DOP was supportive of the Petition. I am equally concerned that the storage of 21 vehicles will also bring with it activities related to a service garage, which is not permitted in a residential zone and will negatively impact the use and enjoyment of the surrounding residential

neighborhood.

Assuming the Petitioner does *not* operate any type of car business, it is still not consistent with a residential zone to permit a 2-story, 3,695 sf garage to park 21 cars. In a residential zone, there is a noticeable difference between having an accessory garage to store an antique car as a hobby where the dwelling is the principal residence of a Petitioner, then one proposed here which is more commercial in both extent and use, than residential.

I find that the proposed oversized garage is not within the spirit or intent of the BCZR because it does not meet the definition of either 'accessory building' or 'accessory structure' in BCZR, §101.1 because it is neither subordinate nor incidental to the home:

> ACCESSORY BUILDING — One which is subordinate and customarily incidental to and on the same lot with a main building.
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> * * * *
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> ACCESSORY USE OR STRUCTURE — A use or structure which: (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served;
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> * * * *

For all these reasons, the Petition for Special Hearing will be denied.

VARIANCE

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.

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

First, Petitioner failed to provide any evidence that the Property is either unique, or that a practical difficulty has been suffered under the standards in *Cromwell*, *supra.* Consequently, the Variance relief fails for that reason. Second, assuming that the Petitioner could provide evidence of uniqueness, Petitioner's request for the additional height on the proposed garage is not related to any unique physical characteristics. The unique feature of a property must cause the practical difficulty that warrants the additional height on the garage. *Cromwell*, at 694-695. There must be a nexus between the Variance requested and the unique attributes of the Property. *Dan's Mountain Wind Force, LLC v. Allegheny Cnty. Bd. of Zoning Appeals*, 236 Md. App. 483, 492-493, 182 A.3d 252 (2018). *Trinity Assembly of God of Balt. City v. People's Counsel of Balt. Cnty*, 407 Md. 53, 82, 962 A.2d 404 (2008). *Montgomery County v. Rotwein*, 169 Md. App. 716, 906 A.2d 959 (2006).

In this case, I find that the additional height is for the convenience of the Petitioner in his desire to store 21 vehicles. 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). The *Chelsey* Court stated: "the fact that a particular improvement would

enhance the owner's enjoyment of the property did not establish that it would be a hardship to continue using the property without the variance." *Id*. At 933 A.2d 488-489. See, e.g., *Citrano v. North*, 123 Md. App. 234, 717 A.2d 960 (1998) (fact that proposed deck created a "pleasant amenity" did not create hardship); *North v. St. Mary's County*, 99 Md. App. 502, 519, 638. A.2d 1175 (owner's desire to build gazebo to read and view creek is not evidence of hardship), *cert. denied sub nom*. *Enoch v. North*, 336 Md. 224, 647 A.2d 444 (1994).

In this case, the denial of the Variance will not deprive the Petitioner of reasonable use of his land in that a garage can be constructed in the rear yard provided it meets BCZR, §400. I also find that the requested Variance relief is not within the spirit and intent of the BCZR for the reasons given and that it will harm the peace and enjoyment of the abutting residential neighborhood and set an undesirable precedent. Accordingly, the Variance relief will be denied.

THEREFORE, IT IS ORDERED, this **25th** day of **November 2022**, by the Administrative Law Judge for Baltimore County that the Petition for Special Hearing pursuant to §500.7 to allow an accessory structure to have a building footprint larger than the footprint of the principal home, be and it is hereby, **DENIED**.

IT IS FURTHER ORDERED that the Petition for Variance from BCZR, §400.3 to allow an accessory structure to have a height of 21 ft in lieu of the maximum allowed 15 ft be, and it is hereby **DENIED**.

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

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlm