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| IN THE MATTER OF<br>CARLOS LEVINE, LEGAL OWNER AND<br>PETITIONER FOR SPECIAL HEARING<br>AND VARIANCE ON THE PROPERTY<br>LOCATED AT 9402 RYANS WAY | *<br>*<br>* | BEFORE THE<br>BOARD OF APPEALS<br>OF |
| 11th ELECTION DISTRICT<br>5th COUNCIL DISTRICT | *<br>* | BALTIMORE COUNTY<br>CASE NO. 22-193-SPHA |

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## OPINION

This case comes to the Board of Appeals of Baltimore County (the "Board") as the result of the denial of a Petition for Special Hearing and Variance submitted by Carlos Levine ("Petitioner") requesting a finding that a proposed garage was an accessory structure and if so, a variance to permit the structure to be 21 feet high as opposed to the required height limit of 15 feet. Mr. Levine represented himself at the ALJ hearing. There was no opposition. In an opinion dated November 25, 2022, Administrative Law Judge Maureen E. Murphy denied all relief. Mr. Levine noted a timely appeal to the Board. Before the Board, he was represented by Adam M. Rosenblatt, Esquire of Venable LLP. Deputy People's Counsel Carole S. Demilio, Esquire entered the case on behalf of People's Counsel for Baltimore County. The hearing was held virtually on March 30, 2023 and a public deliberation was held virtually on May 9, 2023.

The only witness was Mr. Levine. He indicated that the subject property is located between Joppa Road and Honeygo Boulevard in the Perry Hall section of Baltimore County. It is approximately three (3) acres and is significantly larger than any other proximate residential lots. The crux of Petitioner's argument is that a proposed garage of approximately 3,700 square feet is an accessory use associated with his primary residence which, though having some 9,000 square feet of living space, has a smaller total footprint than does the garage. The house is the

primary residence for Mr. Levine, his wife, their three children, and his brother-in-law. The house is three stories plus a basement and is substantially higher than the garage would be. The rear of the lot is significantly sloped and cannot accommodate a structure. In addition, two-thirds of the lot is treed. As a result of the elevation and the trees, the garage cannot be located in the rear of the house. Also, the elevation and the trees shield the proposed garage from the neighbors. The Petitioner indicated that the intended use of the garage is to store up to 25 antique cars. Mr. Levine stated that he operates a fire restoration business in the Baltimore area, and that he collects antique cars as a hobby. As such, the garage is to be used to support his hobby. At this point he owns 17 antique vehicles. Mr. Levine testified that he does not collect these cars as a money-making proposition. For the most part, he swaps his vehicles for other people's vehicles or just purchases other vehicles. While he does occasionally sell a car, he testified that in such a situation, the sale is for the purpose of purchasing another collectible. He himself does not restore the vehicles. If needed, third party vendors do restoration. He currently stores the cars at various storage places that he rents throughout the County.

Mr. Levine's counsel also provided letters to the Board that indicated that the surrounding neighbors did not oppose the variance.

The parties nicely clarified and simplified the issues before the Board. People's Counsel quite reasonably questioned whether the antique cars, given the raw number of cars in the collection, represented an authentic hobby or was a *de facto* business. If it is a business, the garage is not a legitimate accessory use. Petitioner submitted as Exhibit 1 a list of stipulated limiting conditions upon which the parties agreed should the Board grant the relief. As to the

substantive issues themselves, the parties each argued their respective positions vigorously and appropriately.[1]

The first question is whether Mr. Levine's car collecting is a vocation or an avocation, and whether the garage is an authentic accessory building given its large footprint. The definition of "accessory use or structure" is found in the Baltimore County Zoning Regulations (BCZR) § 101.1. While there are a number of requirements for an accessory structure, the only portion of the definition that matters for this case is the requirement that the use or structure be ". . . subordinate in area, extent or purpose to the principal use or structure. . ."

The requirements of area, extent, and purpose are connected by an "or". Curiously, in Maryland jurisprudence, the word "or" can sometimes mean "or" and sometimes mean "and", depending upon the context, either substantive or grammatical. (*Comptroller v. Fairchild Industries*, 303 Md. 280, 285-86 (1985).) For the purposes of this case, the Board finds that the word "or" in the operative clause of the definition of "accessory use or structure" means "or" and not "and". We make that decision because the word "and" is used in other parts of the definition clearly intending to be a joint requirement. The fact that the regulation uses "or" to connect area, extent or purpose", while using "and" to connect other multiple words and clauses in series must mean that the "or" was meant as the disjunctive connector. The question then reduces to whether the garage's **purpose** is subordinate to the residence.[2]

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[1] The fact that People's Counsel agreed to conditions **should** the variance be granted, in no way detracted from People's Counsel's argument that the variance should **NOT** be granted. It was a simple and reasonable accommodation to a contingency that saved counsel and the Board much time and effort. Indeed, the stipulated conditions adequately ensure that Mr. Levine's activities are restricted to a hobby and not a business. Those restrictions are incorporated into the Board's Order.

[2] The proposed garage has a larger footprint than the house which it serves, though the garage is less square footage because of the multi-stories of the residence. Accordingly, one could argue, and indeed Petitioner so suggested, that the garage was "subordinate" in size. Given our ruling, we do not reach that question.

We understand People's Counsel's skepticism regarding the scale of Mr. Levine's car collecting. As a matter of common sense, one could well believe that the large scope of the car collection bespeaks an activity that is more business than pleasure. At the same time, just because the activity involves large collectible items does not necessarily mean that it is not a hobby like collecting small items such as coins, stamps, sports memorabilia, or the like. Even occasionally making a financial gain on the barter or sale of a particular vehicle is not determinative because the same occurs with hobbyists who collect coins, stamps, sports memorabilia, or the like. So, there is nothing *per se* about collecting vehicles which disqualifies that activity from being a hobby. The record in this matter consists essentially of Mr. Levine's own testimony. While we could disbelieve his testimony, we found him to be a credible witness. Thus, from the information presented to the Board, we find that Mr. Levine's car collecting is a *bona fide* hobby. Because the hobby activity is subordinate in "purpose" to the residence, we find that the proposed garage is a valid accessory structure.

We turn then to the question of variance. Pursuant to BCZR § 400.3, an accessory garage height is limited to 15 feet. Mr. Levine proposes to construct a garage that, though only one level, is to be 21 feet in height. Under *Cromwell v. Ward*, 102 Md. App. 691 (1995) a property owner can receive a variance from a zoning restriction if the property is unique **and** if the property owner would otherwise suffer practical difficulty. (*Anderson v. Board of Appeals*, 22 Md. App. 28, 39 (1974).) These dual requirements are codified in the BCZR at § 307. Mr. Levine's property is clearly unique. It is much larger than all of the nearby properties. It is actually set off from the neighboring properties such that it is excluded from membership in the local community organization. It stands alone as an orphan property quite apart from the surrounding residential community. It is different in size, shape, and contour from all of the surrounding

residential properties. It also has a large wooded area and a sloping rear yard. For all of these reasons, we find that the property is unique under *Cromwell*.

As to practical difficulty, the subject property also qualifies. The sloping rear yard makes construction of the garage in the rear an impossibility. Further, since much of the site is treed, there are limited locations upon which a garage can be constructed. In addition, an existing sewer line transects the rear yard, and it is an obvious construction obstacle. We find that strict compliance with the BCZR would unreasonably prevent Mr. Levine from using the property for a permitted purpose, *i.e.* the storage of antique cars as a hobby. The grant of the variance does substantial justice to Mr. Levine and causes no harm to the adjoining and nearby property owners.

Finally, the design of the garage is consistent with the design of the residence. Accordingly, the variance can be granted in strict harmony with the spirit and intent of the BCZR without any detrimental effect on the health, safety, or general welfare of the public or of the surrounding property. It is noteworthy regarding the impact of the variance on the general welfare that the owners of the surrounding properties do not oppose the variance.

## CONCLUSION

For the reasons stated above, the request for a variance to construct a garage in accordance with the site plan introduced into evidence in this matter as Petitioner's Exhibit 2 is granted, subject to the limitations contained in Petitioner's Exhibit 1, which is incorporated into our Order.

## ORDER

**THEREFORE, IT IS THIS** 12th day of July, 2023 by the Board of Appeals of Baltimore County hereby

**ORDERED,** that, for the reasons stated in the Opinion that accompanies this Order, the Board finds that the proposed garage at 9402 Ryans Way, Perry Hall, Maryland, as reflected in

the site plan that was offered into evidence as Petitioner's Exhibit 2 in this matter, is a valid accessory use; and it is further

**ORDERED,** that Petitioner's Request for Variance Relief pursuant to Section 400.3 of the Baltimore County Zoning Regulations ("BCZR") to permit the construction of a garage at 9402 Ryans Way, Perry Hall, Maryland that is twenty-one feet in height as opposed to the fifteen-foot height limitation otherwise mandated for an accessory use structure is **GRANTED**, subject to the limitations contained in Petitioner's Exhibit 1 which is incorporated into this **ORDER**; and it is further

**ORDERED**, that any future deed or any document conveying said property, or any portion thereof, shall include a specific reference to this matter as **Board of Appeals Case No. 22-193-SPHA**.

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**

Joseph L. Evans, Panel Chair

Deborah C. Dopkin

Sharonne R. Bonardi

**VOLUNTARY CONDITIONS OF APPROVAL**
**PETITIONER AND PEOPLE'S COUNSEL**
**Case No. 2022-0193-SPHA**
**9402 Ryans Way**

1. The property will be Petitioner's principal residence, currently undergoing renovation, on or before July 1, 2023.
2. Maximum number of cars in the garage at a given time will be 25.
3. All cars on the property will be for private residential use, with no business component operated from the property.
4. No work on cars will take place on the property, and no commercial construction equipment for work on cars, and no commercial construction equipment for Petitioner's construction company, will be kept on the property.
5. No sales of cars will take place on the property.
6. No outdoor storage of collectable cars, all cars will be kept within the proposed garage.

EXHIBIT
1

# Board of Appeals of Baltimore County

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July 12, 2023

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RE: In the Matter of: *Carlos Levine – Legal Owner and Petitioner*
Case No.: 22-193-SPHA

Dear Counsel:

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: Carlos Levine
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney/Office of Law