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| **IN THE MATTER OF:**<br>**CARLOS LEVINE** | * | **BEFORE THE** |
| | * | **BOARD OF APPEALS** |
| **9402 Ryans Way** | * | **FOR BALTIMORE COUNTY** |
| **11th Election District**<br>**5th Council District** | *<br><br>* | **Case No. 22-193-SPHA** |
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**PETITIONER'S**
**AUTHORITIES AND CONSIDERATIONS FOR THE BOARD**

## I. THE WORD "OR" IN THE RELEVANT PORTION OF THE ACCESSORY USE OR STRUCTURE PROVISION MEANS "OR" NOT "AND"

BCZR § 101.1:

> **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; except that, where specifically provided in the applicable regulations, accessory off-street parking need not be located on the same lot. An accessory building, as defined above, shall be considered an accessory structure. A trailer may be an accessory use or structure if hereinafter so specified. An ancillary use shall be co+nsidered as an accessory use; however, a use of such a nature or extent as to be permitted as a "use in combination" (with a service station) shall be considered a principal use.

BRIEF EXPLANATION

An accessory use or structure need only be subordinate in one of three ways: area, extent, **or** purpose. The word "or" is defined in BCZR Section 101.1 as follows:

> OR — The word "or" shall mean "and/or" unless modified by use of the word "either" or **unless the context otherwise clearly indicates another meaning**.

(emphasis added).

While the word "or" can mean "and" in certain circumstances, the context within the definition of "accessory use or structure" makes clear that the word "or" means "or" in subsection (b) of the definition.

As Mr. Evans wisely pointed out, in subsection (a), the word "and" is used to require that an accessory use or structure be "customarily incident **and** subordinate to **and** serves a principal use or structure." In subsection (b), the word "or" was used, showing that an accessory use or structure need only be subordinate in area, extent, **or** purpose. The contrast between the wording of subsection (a) and subsection (b) shows a clear intent to differentiate between requiring **all** items in subsection (a), and **only one** item in subsection (b) of the definition of accessory use or structure.

The list of conditions in Petitioner's Exhibit 1 ensure that the proposed garage remains subordinate to the home in extent, purpose, and arguably area given the larger square overall footage of the home despite the smaller building footprint. The proposed conditions will also ensure the garage remains accessory to the primary and principal use of the property as Petitioner's family home. Looking at the context and intent of this provision, the requested garage meets the definition of an accessory structure.

## II. PRACTICAL DIFFICULTY

Petitioner will not include argument, but simply wishes to point the Board to the "practical difficulty" definition established in *Anderson v. Bd. of Appeals*, 22 Md. App. 28, 39 (1974):

> Where the standard of "practical difficulty" applies, the applicant is relieved of the burden of showing a taking in a constitutional sense, as is required under the "undue hardship" standard. In order to justify the grant of an area variance the applicant need show only that:
>
> "1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
>
> "2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
>
> "3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured." *McLean v. Soley*, 270 Md. 208, 214-15, 310 A. 2d 783, 787 (1973), *quoting* 2 Rathkopf, The Law of Zoning and Planning, 45-28-29 (3d ed. 1972).
>
> The lesser burden is permitted because the impact of an area variance is viewed as being much less drastic than that of a use variance.

## CONCLUSION

Petitioner respectfully requests that the Board grant its petition for special hearing and variance subject to the agreed-upon conditions submitted as Petitioner's Exhibit 1. The conditions ensure that the relief can be granted without having any negative impact on the surrounding community.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify on this 14th day of April, 2023 that a copy of the foregoing pleading was emailed to: Carole Demilio, Deputy People's Counsel for Baltimore County: cdemilio@baltimorecountymd.gov.

Adam M. Rosenblatt