

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(516 E. Seminary Avenue)		
9 th Election District	*	OFFICE OF ADMINISTRATIVE
3 rd Council District		
William A. McFaul &	*	HEARINGS OF
Mary E. McFaul		
Legal Owners	*	BALTIMORE COUNTY
Petitioners	*	CASE NO. 2021-0059-A
* * * * *		

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by William A. McFaul and Mary E. McFaul, Petitioners for property located at 516 E. Seminary Avenue (the “Property”). The Petitioners are requesting variance relief from the Baltimore County Zoning Regulations (“BCZR”), §400.3 to permit the height of an accessory structure (garage) of 25 ft. in lieu of the required maximum of 15 ft., and from BCZR, §400.1 to permit the accessory structure (garage) to be located in the side yard in lieu of the required rear yard.

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. Petitioner William A. McFaul appeared in support of the Petition along with Bruce E. Doak, a licensed land surveyor, who prepared a site plan to accompany the Petition (the “Site Plan”). (Pet. Ex. 1). Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and the Department of Environmental Protection and Sustainability (“DEPS”) which agencies did not oppose the requested relief.

The Property is approximately 2.0270 acres and is zoned density residential (DR 1). Mr. Doak explained that it is improved with a 2-story dwelling built in 1952 and has an attached 1-car

garage. (Pet. Ex. 2). The Property was created as Lot 70 on the Plat of Hampton dated July 16, 1930. (Pet. Ex. 3). It is a triangular shaped lot and is bordered on 2 sides by streets. The topography slopes down from the front toward the house and then a steeper drop and decline from the side/rear of the house to the rear Property line. (Pet. Exs. 1, 4, 6, 7J, 7L). Mr. McFaul testified that the rear yard is a bed of rocks which became apparent when he had an in-ground pool constructed. While there is sufficient space in the rear yard for a detached garage, the slope and bedrock make it practically difficult to construct one in that space.

The proposed size of the garage is 37 x 25 ft. with a height of 25 ft. It will have a second floor area for storage and/or a game room. There are 3 garage bays proposed for personal vehicles. In the proposed location, the detached garage would be immediately accessible off the paved driveway in a flat area which will need minimal grading. (Pet. Exs. 7F, 7G, 7H). The proposed height is being requested so that the garage roof matches the roof pitch of the house and to accommodate a second floor. (Pet. Ex. 7D). Garage elevations for each side of the garage were presented. (Pet. Ex. 8). Mr. McFaul confirmed that the garage will not be used for a residence or for commercial purposes.

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).

The Property is unique due to the sloping topography and bedrock which exist in the rear yard. This uniqueness imposes an unreasonable hardship upon the Petitioners if they were required to construct the garage in the rear yard. I find that the only practical place to construct

the garage is in the proposed location so as to minimize the grading and for ease of access. The Property is over 2 acres which provides a buffered distance from adjacent properties and therefore, the proposed location of this garage on this Property will not negatively impact the neighborhood. I also find that the requested variance relief can be granted in strict harmony with the spirit and intent of the BCZR and without injury to the health, safety or general welfare, particularly in light of the lack of opposition.

THEREFORE, IT IS ORDERED, this 18th day of **May 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR § 400.3 to permit the height of an accessory structure (garage) of 25 ft. in lieu of the required maximum of 15 ft., and pursuant to BCZR § 400.1 to permit the accessory structure (garage) to be located in the side yard in lieu of the required rear yard is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
2. Petitioners and all subsequent owners shall not convert the garage into a dwelling unit or apartment. The proposed garage shall not contain any sleeping quarters, living area, and kitchen or bathroom facilities.
3. The garage shall also not be used for commercial or industrial purposes.
4. The garage shall not have a separate utility or electric connection and shall connect all electrical to the home.
5. Petitioners must comply with the DOP and DEPS ZAC comments, copies of which are attached hereto and make a part thereof.

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

A handwritten signature in black ink that reads "Maureen E. Murphy". The signature is written in a cursive style with a large, looped 'M' and 'P'.

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm