

IN RE: <b>PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>&amp; VARIANCE</b>		
<b>(11 Kauffman Road)</b>	*	OFFICE OF
7 <sup>th</sup> Election District		
3 <sup>rd</sup> Council District	*	ADMINISTRATIVE HEARINGS
Angela Tyrrell		
& Casey Tyrrell	*	FOR BALTIMORE COUNTY
<b>Legal Owners/Petitioners</b>	*	<b>Case No. 2021-0222-SPHA</b>
* * * * *		* * *

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Special Hearing and Variance filed by Angela S. Tyrrell and Casey Tyrrell (“Petitioners”) for the property located at 11 Kauffman Rd., Parkton (the “Property”). The Special Hearing was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”), §101 to permit a proposed accessory detached structure (garage) larger than the principle structure. Variance relief was filed pursuant to the BCZR, §400.3 to permit a proposed accessory structure with a height of 27 ft. in lieu of the maximum height of 15 ft.

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 Casey Tyrrell appeared at the hearing in support of the Petition along with R. Craig Rodgers, PE who prepared a site plan (“Site Plan”). (Pet. Ex. 3). Timothy M. Kotroco, Esquire represented the Petitioners. There were several neighbors and/or nearby property owners who asked questions but did not oppose the requested relief namely: Mike Vinton, 20 Kauffman Rd.; David Hausner, 105 Kirsten Ct. who was President of Cameron Run Home Owner’s Association; and Roberto Zanotta, 209 Kali Ct.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”), Department of Environmental Protection and Sustainability (“DEPS”), and Development Plans Review (“DPR”) which agencies did not oppose the requested relief.

The case proceeded by way of proffer by Mr. Kotroco. The Property is approximately 3.81 acres +/- and is improved with a split-level, 1,300 sf home where the Petitioners reside. The home has a 2-car garage but no basement for storage. It is zoned Rural Residential (RC 5). (Pet. Ex. 2). Mr. Kotroco described the Property as larger than the other lots in the neighborhood. (Pet. Ex. 3). The Site Plan shows an oddly-shaped Property with a Drainage and Utility Easement on the western side of the Property due to a stream which runs through it. (Pet. Exs. 1, 3). Also located on the western side of the Property are mature, dense trees which form a woodland area, blocking the view from adjacent properties. This woodland area is visible in the aerial photograph. (Pet. Ex. 2A). Street view photographs were also provided which show a home set into a low lying area with rolling hills hiding it from view of Kauffman Rd. (Pet. Exs. 4-1 through 4-16).

Due to the lack of storage and size of the home, Petitioners are requesting to build a 1-story, 3,072 sf, 27 ft. high, pole barn in the rear yard. No trees will be cleared to construct the pole barn. There are several mature trees next to the spot where the pole barn will be constructed. The size and height of the proposed barn are needed to store four (4) classic cars, a farm trailer, and possibly an RV camper which Petitioners may purchase. No car lift will be installed. Mr. Rodgers explained that the wider the base of the pole barn, the higher the pitch of the roof is required to be in order to accommodate snow loads.

Mr. Rodgers opined that the proposed barn will sit in a low level flat area and as such, the natural rolling hills and mature trees will shield the pole barn from view. There is one area without trees facing the Riemer property where the Petitioner intends to plant trees and/or add landscaping.

A Landscape Plan will be submitted. The existing driveway to the house will also serve as the ingress/egress for the pole barn. The barn will be heated with either radiant flooring or a pellet stove. A 3-D rendering of the proposed pole barn depicts an agricultural type structure. (Pet. Ex. 5).

### SPECIAL HEARING

"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). Based on the evidence, I find that the Special Hearing relief to permit the detached pole barn with a footprint larger than the footprint of the dwelling should be granted. The area is agricultural and residential and as noted by DOP, such structures are common in rural areas. There is no storage in the dwelling due to the lack of a basement. As a result, the existing 2-car garage is used for storage and cannot accommodate the classic cars. The Bulk Regulations in the RC5 zone do not specifically limit the size of a detached accessory structure or require that it have a smaller footprint than the dwelling. It appears to be zoning practice to request such Special Hearing relief when the size of the accessory structure is larger than the dwelling. The definition of accessory structure in BCZR, §101.1 does state that an accessory structure should be 'subordinate in area' to the principal dwelling. In this case, the footprint of the proposed barn is larger than the split-level dwelling but is necessary for storage, to house classic cars, farm-type equipment, and possibly a camper. The rolling hills and mature, dense woodlands, and other scattered mature dense trees will serve as a natural buffer to screen the barn from Kauffman Rd. and from adjacent properties. Accordingly, I find the proposed garage will not be detrimental to the health, safety or general welfare of the locality.

## VARIANCE

Variance relief was requested from BCZR, §400.3 which imposes a 15 ft. height limit for accessory buildings. 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). I find that the Property is unique due to its shape, size, topography, floodplain and stream which make it unlike other properties in the area. I find that the Petitioners would suffer a practical difficulty and unreasonable hardship if the proposed height variance is not granted because the uncontroverted evidence was that the proposed roof pitch (height) is tied to the width/size of the barn, and the width/size is needed for storage. 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.

In the alternative, I note (without deciding) that BCZR, §1A04.3 provides: “No *structure* hereafter erected in an R.C.5 Zone shall exceed a height of 35 ft., except as provided under BCZR, §300.” The proposed height here is only 27 ft. Furthermore, BCZR, §1A04.3 differentiates the term ‘structure’ from ‘dwelling,’ the latter of which is defined in BCZR, but the former is not. Thus, any ‘structure’ in an RC5 zone can be up to 35 ft. In addition, BCZR, §300 provides that the 35 ft. height limitation in BCZR, §1A04.3 does not apply to a barn. Accordingly, under the plain reading of BCZR, §1A04.3 and §300, it would appear that the Petitioner does not need a Variance for the proposed height in an RC5 zone. Yet, this language is inconsistent with the definition of ‘accessory structure’ in BCZR, §101.1. Notwithstanding the

express language in BCZR §1A04.3, §300, and §101.1, it is apparently zoning practice in Baltimore County that a detached structure must meet the 15 ft. height limit in BCZR, §400.3 as above.

THEREFORE, IT IS ORDERED, this 26<sup>th</sup> day of **November 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing from the Baltimore County Zoning Regulations (“BCZR”) §101 to permit a proposed accessory structure (garage) larger than the principle structure is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Variance from BCZR, §400.3 to permit a proposed accessory structure with a height of 27 ft. in lieu of the maximum height of 15 ft. 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 any party can file an appeal. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
2. Petitioners or subsequent owners shall not convert the barn into a dwelling unit or apartment. The proposed barn shall not contain any sleeping quarters, living area, and kitchen or bathroom facilities.
3. The barn shall also not be used for commercial or industrial purposes.
4. The barn shall not have a separate utility or electric connection and shall connect to the electrical in the home. The barn shall not have separate water connection and shall connect to the water in the home.
5. The Petitioners must comply with the DEPS ZAC comments, a copy of which is attached hereto and made a part thereof.
6. Petitioners must file a Landscape Plan with the Baltimore County Landscape Architect.

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, stylized initial "M".

MAUREEN E. MURPHY  
Administrative Law Judge  
for Baltimore County

MEM/dlm