

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(34 Edmondson Ridge Road)		
1st Election District	*	OFFICE OF
1st Council District		
John & Trisha Phillips	*	ADMINISTRATIVE HEARINGS
<i>Legal Owners</i>		
	*	FOR BALTIMORE COUNTY
Petitioners		
	*	Case No. 2021-0170-SPHA

* * * * *

ORDER ON MOTION FOR RECONSIDERATION

This matter originally came before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Special Hearing and Variance filed by John Phillips, legal owner of the property located at 34 Edmondson Ridge Rd. The Special Hearing was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) §500.7 to approve an accessory building (garage) with a building footprint greater than the principle dwelling. Variance relief was also requested from the BCZR, §§400.1 and 303.1 to approve an accessory building (garage) in the side yard in lieu of the required rear yard only and to allow a front yard setback of 9 ft. in lieu of the front yard average of 22 ft.

A hearing took place on September 20, 2021 via Webex. After carefully considering the testimony and evidence presented in that case, a written decision was issued dated October 6, 2021.

At the hearing, Petitioner, John Phillips appeared, *pro se*, as did 14 Protestant/neighbors who were opposed to the Petition. As depicted on Petitioner’s Site Plan, the Property, which consists of 2 lots, measures only a total of 9,134 sq. ft. +/- . Significantly, the Property is already improved with a 1934 home; a 400 sf, 2-car garage in the rear; a canopy/carport type structure next to the garage in the rear; and a shed which extends from the side yard into the rear yard, and

even into the County right-of-way. The Property is highly visible as it is straddled by 2 busy streets which have a lot of traffic. The Protestants collectively described the Property as a 'junkyard' due to the number of vehicles (8 plus 3 which are regularly driven by the Petitioner, his wife and their son for a total of 11 vehicles) parked on the grass and in his driveway. Photographs taken by the Protestants confirmed that Petitioner parks all of his vehicles on his grass and in his driveway.

In this Petition, Petitioner proposed a second, oversized garage on the Edmondson Ridge side of the Property which garage would have two (2) separate entrances with overhead doors – one from the driveway and the other facing Edmondson Ridge Rd. Protestants were collectively opposed not only to a second garage, but to both its large size and location in the front/side yard. Many Protestants describe the proposed garage as a commercial looking facility. Protestants' concerns were valid, particularly in light of both the existing volume of vehicles stored on the Property, and the Petitioner's admission that at least 3 motorcycles were advertised for sale and/or were sold from the existing garage within the last 24 months.

Petitioner is unhappy that the relief sought was not granted. In his Motion for Reconsideration, he asks that he be permitted to build the second garage based on the same evidence he presented at the hearing. In his Motion, Petitioner highlights specific facts which he perceives to be incorrect and/or decision-changing, while ignoring other relevant and material facts which were set forth in the Opinion and Order. None of the facts in Petitioner's Motion permit the inferences to support the requested relief he demands. Maryland courts hold that a "material fact is a fact the resolution of which will somehow affect the outcome of the case." *Arroyo v. Bd. of Educ.*, 381 Md. 646, 654, 851 A.2d 576, 581 (2004).

The facts highlighted by the Petitioner in his Motion only lend further support for the denial of his request. By way of example, he contends, on the one hand, that he is not involved in the sale of motorcycles, but then admits that he has “sold two, maybe three motorcycles in the last 24 months”, and that he has placed for-sale signs on motorcycles in his Prospect Avenue driveway. He also emphasized that although he has not sold a motorcycle on Craigslist, he was planning to sell one of his cars on Craigslist notwithstanding his assertion that he does not sell cars. He asserts in one part that he does not presently repair or restore cars, but then states he wants to restore his cars in his proposed second garage.

As for whether he or his wife drives the white Cadillac is of no significance; what matters is that he, his wife and his son each drive a car which are in addition to the collection of 8 vehicles parked in his front and sides yards. In regard to whether the proposed separate entrances to the garage will have 2 single overhead doors facing the driveway and one overhead door facing Edmondson Ridge Rd. (i.e. 3 overhead doors), or, one large overhead door facing the driveway and another overhead door facing Edmondson Ridge Rd. (i.e. 2 overhead doors), misses the point. What is significant is the fact that the proposed second garage will have two (2) separate entrances, in combination with its larger size and location in the front/side yard, which gives the appearance of a commercial garage. In regard to the Code Violation citation, he claims that the statement in the Opinion that “...he applied for one set of tags and plans to apply for the other” is entirely wrong because, while admitting that he had two (2) untagged vehicles, he actually applied for a duplicate title for one vehicle, and then planned to make one trip to MVA for both untagged vehicles. Petitioner fails to appreciate that this is a distinction without a difference as it pertains to the burden of proof.

The Petitioner is unwilling to accept that his testimony lacked credibility as compared to the testimony and evidence of the Protestants who live adjacent to, across the street from, and in the same neighborhood. The Protestants collectively had personal knowledge of the Petitioner's activities by sight and sound. Petitioner fails to understand that his proposed second, oversized garage in the front/side yard is out of character with this 1920-1930s neighborhood. Granting this relief will do substantial injustice to this neighborhood both visually and audibly.

As stated in the Opinion and Order, Petitioner failed to prove a practical difficulty or unreasonable hardship because there is an existing garage and canopy/carport and as such, this is a classic case of self-imposed hardship. Importantly, with the denial of the second, oversized garage, Petitioner will still be able to use his Property as his 'home' which is its intended use. Simply because he did not get what he wants, there is no deprivation of use.

Based on the totality of the evidence presented, this case is a textbook example of relief which is not within the spirit or intent of the BCZR, and would have been injurious to the safety and general welfare of this neighborhood. *Salisbury Bd. of Zoning Appeals v. Bounds*, 240 Md. 547, 555, 214 A.2d 810 (1965). Among some (not all) of the facts which were material to the original decision are: the location of this highly visible property bounded by 2 heavily trafficked streets within a residential neighborhood; the small size of the Property (9,134 sf); a large structure within the Property which would impede the view of traffic on Prospect Ave.; the proposed size of the structure being larger than the house and larger than other garages in the neighborhood; a second garage where there already exists a 400 sf, 2-car garage in the rear yard; other existing structures in the rear yard including: a deck, a canopy/carport next to the garage and shed.

Moreover, the photographs presented by the Petitioner (Pet. Exs. P1-P4) showing the spot on the Property (red flags) where the second garage was proposed to be located also confirms that in addition to its being located in the side yard, it extends beyond the front foundation wall into the front yard along Edmondson Ridge Rd. As a result, in addition to the front setback relief, the Petition should have requested that the proposed garage be located in both the front and side yards and failed to do so.

At the hearing the Petitioner was permitted to present all of his evidence, he was allowed to testify and to continuously repeat the same points over and over, particularly in response to the Protestants' questions. Every Protestant was permitted to ask questions and/or testify. Petitioner was not prevented in any way from presenting his case. There were no procedural issues or irregularities which inhibited his due process. Petitioner received a fair hearing. Consequently, Petitioner's regurgitation of the same facts in his Motion does not warrant reconsideration of the Opinion and Order, it only strengthens the reason for the denial.

Therefore, having considered the Motion for Reconsideration,

IT IS ORDERED by the Administrative Law Judge for Baltimore County this 25th day of October, 2021, that the Motion for Reconsideration filed by Petitioner be, and it is hereby **DENIED**; and,

IT IS FURTHER ORDERED that any appeal from this denial of the Motion for Reconsideration, must be made within thirty (30) days from the date of this Order.



MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:mem