

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

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Special Hearing and a Variance filed by the Petitioners John Phillips and Trisha Phillips (“Petitioners”) for the property located at 34 Edmondson Ridge Rd., Catonsville (the “Property”). 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.

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, John Phillips appeared, pro se, at the hearing in support of the Petition. There were many Protestants and interested citizens who appeared and testified in opposition at the hearing.

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 a total of 9,134 sq. ft. +/-, and is between Edmondson Ridge Rd. and N.

Prospect Ave. (Pet. Ex. S-1). It is located in a residential neighborhood and is zoned Density Residential (DR 5.5). The Property is comprised of two (2) lots which Petitioners have used as one (1) property: 34 Edmondson Ridge Rd. (4,176 sf); and 36 Edmondson Ridge Rd. (4,958 sf). (Pet. Ex. D-1).

The Property is improved with a 2-story single family home (667 sf) with a rear deck which was built in or about 1934. The home is occupied by the Petitioners. In the rear yard is a 2-car garage (400 sf) which is accessed from N. Prospect Ave. Next to the 2-car garage is a canopy structure which mirrors a carport. A shed which is 14 ft. in height and has an overhead door is also in the rear yard. Petitioners admit that 12 ft. of the shed is located within the County right-of-way along N. Prospect Avenue. (Pet. Ex. S-1). A wood perimeter fence of varying heights surrounds some parts of the Property. A 15 ft. wide paved driveway, accessible from Edmondson Ridge Rd., is located on both lots. (Pet. Ex. S-1).

Petitioners request relief from BCZR to construct a 24 ft. x 44 ft. (1,056 sf), 15 ft. tall, 1-story garage, which would be larger than the home and constructed in the left side yard next to the driveway. The proposed garage also cannot meet the front setbacks under BCZR, §303.1. Mr. Phillips would construct the garage himself. Mr. Phillips testified that the expense to build a replacement garage at the size he wants in the rear yard is cost prohibitive. The existing 2-car garage is used for storage including motorcycles which he repairs and sells. The shed is used for storage of lawn equipment and other items. If the proposed garage is permitted, the shed would be removed. However, the existing 2- car garage and canopy/carport structure would remain. Mr. Phillips believes that removing the shed will increase visibility from Edmondson Ridge Rd. to N. Prospect Ave. for vehicles stopping at the stop sign on Edmondson Ridge Rd.

Mr. Phillips has a car collection which he stores on the Property. At any given time he will have 8 cars, some of which are collector or antique. He typically parks them in the driveway and on the grass of Lot 36. While he submitted photographs of his Property and the proposed area where the additional garage would be constructed, his collection of cars - other than an old yellow car and white van which has a rack on its roof- were not in view. He contends that the white van is his personal vehicle.

Elizabeth Holtz - 57 N. Prospect Ave. and Jasika Blow, 55 N. Prospect Ave. provided exhibits including photographs of Mr. Phillips' car collection which are parked in the driveway and on the grass. (Prot. Holtz Ex. 1-4). In these photographs, there are at least 4 older cars plus the white van. There are 2 cars without tags and Mr. Phillips testified that after receiving a Code Enforcement citation, he applied for one set of tags and plans to apply for the other. One photograph shows a white Cadillac parked in front of the existing 2-car garage, as well as the roof of the canopy/carport next to the garage. (Pet. Ex. 1). Mr. Phillips stated that his wife drives the white Cadillac. Additionally, Ms. Holtz and Ms. Blow added that the convergence of N. Prospect with Edmondson Ridge Rd. at that stop sign, is a dangerous intersection. There is no stop sign on N. Prospect Ave.

Susan Larsen, 68 N. Prospect Ave., is opposed to the Petition. She reasons that the Petitioners have an existing 2-car garage and shed which should be sufficient for residential use. She finds the proposed garage is the size of a commercial garage. The proposed garage will reduce visibility at this dangerous intersection as drivers along Edmondson Ridge will not be able to see over to N. Prospect Ave. The proposed garage is 90-100 ft. from the stop sign. Given the history of vehicle storage on this Property, Ms. Larsen is concerned that if the additional garage is granted, that Mr. Phillips will continue to operate a parking lot, car repair and/or vehicle sales business

from the Property.

Amy Hammack, 6026 Edmonson Ave. testified on behalf of her mother, Emma Hammack who has lived adjacent to the Property at 32 Edmondson Ridge Rd. for 50 years. Ms. Hammack expressed relief that the shed would be removed to increase visibility but that an additional garage would increase traffic safety concerns near an already dangerous intersection. It will not eliminate the number of cars parked on the grass or in the driveway. Ms. Hammack testified that her mother's home has a 1 car garage which is also accessed by N. Prospect Avenue. Ms. Hammack testified that the storage and parking of cars on the Property looks like a junkyard and will decrease property values.

Geoffrey Martin, 62 N. Prospect Ave. lives in the home directly across from Petitioners' existing 2-car garage. From his Property, visibility is already reduced across to Edmondson Ridge Rd. and will only get worse with the addition of another garage. Mr. Martin has personally observed at least 8 cars at a given time parked on the driveway of the Property. As with other residents, he contends that the existing 2-car garage should be used by Mr. Phillips if he wants to work on his car collection. He is concerned that the classic or antique cars need a lot of work which will increase the use by Mr. Phillips of air tools and compressors which are loud and therefore, make worse the use and enjoyment of a residential neighborhood. When asked about a hydraulic lift in the additional garage, Mr. Phillips responded that he is also considering the purchase of a lift for the new garage.

Nicki Green Johnson, 65 Edmondson Ridge Rd. is opposed to the proposed garage because it exceeds the size of the Petitioners' house. Given the existing storage and repair of cars at the Property, she contends that the proposed garage has the appearance of a commercial auto body shop. Ms. Johnson also agrees that the construction of the garage in the side yard will reduce

visibility over to N. Prospect Ave. She said that Edmondson Ridge Rd. is 50 ft. wide street and has no sidewalks.

Pamela Fetsh, 103 S. Symington Ave. testified in opposition and agreed that even with the removal of the shed which she called “a wall of obstruction”, a garage in the proposed location will not help the sight line to determine if traffic is coming down N. Prospect Ave. Ms. Fetsh added that she is concerned that working on cars in the additional garage will increase noise and odors. She questioned Mr. Phillips on the details of the new garage construction and highlighted that it will have 3 separate overhead doors: 2 overhead doors facing the driveway; and one overhead door facing Edmondson Ridge Rd. While a new curb cut is not proposed for the Edmondson Ridge Rd. entrance, he would drive his vehicles on the lawn to enter on that side. Ms. Fetsh noted that the proposed garage is not consistent with other residential garages in the neighborhood which are smaller than the homes and located in the rear yards.

Cheryl De Petro, 73 Edmondson Ridge Rd. lives in a home diagonal from the Petitioners. She has personally observed 7 cars at one time parked on the Property and those cars have remained. She believes that an additional garage would make the problem worse. She recalls the old yellow car arrived in 2020. She agreed with the testimony that visibility across the Property will be made worse with another garage.

Brandon Johnson, 65 Edmondson Ridge Rd. has personally observed the collection of cars parked on the Property. He questioned Mr. Phillips on the number of cars that could fit inside the new garage. Mr. Phillips responded that the new garage could hold up to 5 cars and that any which do not fit, will be parked in the driveway. Mr. Johnson also asked about the cars which Mr. Phillips has sold or will be for sale. Mr. Phillips testified that he sells motorcycles on Craig’s List.

Brenda Weeks, 32 Edmondson Ridge Rd. has personally observed 8 cars parked on the Property continuously including 2 of which (a black car and small truck) have been untagged for years. Ms. Weeks testified that her Property has the same 2-car garage as that of the Petitioners and that she parks a Ford Expedition in it. She echoed the testimony of other neighbors that the driveway and grass look like a parking lot or junkyard.

Amelia Grimes, 63 Edmondson Ridge Rd. confirmed that the additional garage will block the line of site from Edmondson Ridge Rd. Drivers coming down N. Prospect Ave. proceed without stopping through the intersection or even checking for cars on Edmondson Ridge Rd.

Carl Mosley, 5805 Edmondson Ridge Rd. has also personally observed typically 7 cars stored on the Property although at the time of the hearing there were 8 cars. He stated that over the last 12 months, the average number of cars was 5. Mr. Mosley questioned the proposed 3 overhead doors with separate entrances if the use was not commercial. He pointed out the proposed garage is 19 ft. wider than the average home in the neighborhood. Mr. Mosley is also concerned with the appearance of the proposed vinyl garage as being out of character with the existing neighborhood of homes built in 1920s. Mr. Mosley questioned why a garage could not be constructed attached to the house or onto the existing garage.

Jessica Smith, 66 N. Prospect Ave. testified in opposition that while Mr. Phillips claims that restoring and repairing classic or antique cars is a hobby, the historic use of the Property appears to be commercial. Since she has lived in her home, Mr. Phillips has sold motorcycles out of the existing 2-car garage. Mr. Phillips admitted that in the last 3 months, he has sold 3 motorcycles. Ms. Smith asserted that if Mr. Phillips has 7-8 cars stored on his Property, the additional garage will encourage the purchase and sale of more. Ms. Smith is opposed to the large footprint for the garage as proposed.

Thomas Buchman, 48 N. Prospect Ave. agreed that Mr. Phillips is selling cars that he is restoring and that this is a commercial use.

SPECIAL HEARING

A hearing to request special zoning relief is proper under BCZR, §500.7 as follows:

The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

"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). And, "the administrative practice in Baltimore County has been to determine whether the proposed Special Hearing would be compatible with the community and generally consistent with the spirit and intent of the regulations." *Kiesling v. Long*, Unreported Opinion, No. 1485, Md. App. (Sept. Term 2016).

Petitioners seek Special Hearing relief to construct an additional 5-car garage with a building footprint greater than the house. As Mr. Phillips admitted, he desires to store the classic and/or antique cars which have been continuously parked on the driveway and grass in the side of the garage. Due to the number of cars and his desire to work on them, as well as a potential car lift, the proposed 1,056 sf garage with 3 overhead doors and 2 entrances.

Based on the evidence, I find that the proposed garage with a footprint larger than the 1934 home which sits within a residential neighborhood of homes built in the 1920s and 1930s, is neither compatible nor consistent with the spirit and intent of the BCZR. This Property is zoned Density

Residential. As such, an automobile parking lot, recreational vehicle parking lot, an automobile repair shop, an automobile sales lot, or an automobile accessory shop is not permitted either by right, or by special exception, in this DR 5.5 zone. While the instant case is not a Code Enforcement hearing, I would be remiss in evaluating whether the proposed garage is within the spirit and intent of the BCZR, not to note that the Petitioners should have received a Code Enforcement citation for having a parking lot of vehicles, for repairing vehicles and motorcycles, and for selling vehicles from this residential Property. Mr. Phillips has maintained this parking lot on the Property under the guise that the vehicles in the photographs are all his personal vehicles. Yet, he admitted to repairing and selling motorcycles out of the existing garage. Moreover, if the white van is commercially tagged and/or used commercially (as Mr. Phillips admitted to being a licensed electrician), the van cannot be parked on residential property under BCZR, §431.1 and/or under Baltimore County Code, §18-2-206.

In short, Mr. Phillips needs to find a commercial zoned property to store and work on his collection of vehicles. Only uses which are listed in the BCZR in each zone are allowed. Toward this end, under BCZR, §230.1.A.9, automobile parking lots and recreational vehicle parking lots are permitted in a Business, Local (BL) zones. Similarly, BCZR, 233.1.B permits a service garage and new automobile sales facility with outdoor sales area in a Business, Major (BM) zone. Likewise, BCZR, §236.2, automotive service stations and used motor vehicle outdoor sales area are permitted in the Business, Roadside (BR) zone. Again, this Property is not commercially zoned.

I agree with the Protestants that the proposed garage is the size of, and designed as, a commercial garage and does not belong in this established residential neighborhood. The existence of an additional garage would only exacerbate the storage and repair of vehicles on the

Property as the garage can conceivably store at least 5 cars. This would only encourage Mr. Phillips to continue to buy, park and store additional vehicles or motorcycles on the driveway and in the grass. Given its location between 2 streets, this particular Property is highly visible to adjacent homes and to ongoing traffic. Even with the removal of the shed which is admittedly in the County right-of-way, the combined lots are not large enough for Mr. Phillip's oversized garage. Accordingly, the Special Hearing relief will be denied.

VARIANCE

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).

First, for zoning purposes, I find that the lots have merged. *Friends of Ridge, et al. v. BGE*, 352 Md. 645, 724 A.2d 34 (1999). In accordance with the holding in *Friends of Ridge*:

We shall hold that a landowner who clearly desires to combine or merge several parcels or lots of land into one larger parcel may do so. One way he or she may do so is to integrate or utilize the contiguous lots in the service of a single structure or project, as respondent proposes in the instant case. Although this is not the general application of the doctrine of merger as it relates to zoning, we perceive no rational objection to applying the same principles to the circumstances of this case, resulting in a larger parcel. For title purposes, the platted lot lines may remain, but by operation of law a single parcel emerges for zoning purposes.

Id. at 40. The size of 36 Edmondson Ridge Rd. is only 4,958 sf and given its location at the convergence of Edmondson Ridge Rd. and N. Prospect Ave., it is not large enough to have a single family dwelling.

Second, in regard to the variance request, the Petitioners seek to construct the oversized garage in the side yard, rather than the rear yard. Due to its proposed size, it cannot meet the front residential setbacks. While at first glance the site plan shows an elongated triangular Property, the Petitioners admit that there are 2 other lots in the neighborhood which are bordered by 3 sides. (Pet. Ex. D-1). As such, the Property fails to meet the definition of ‘uniqueness.’ In requiring a finding of "uniqueness", the Court of Special Appeals in *Cromwell* referred to the definition of “uniqueness” provided in *North v. St. Mary’s County*, 99 Md. App. 502, 514 (1993):

In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects in bearing or parting walls.

Cromwell at 710. The *Cromwell* Court connected the variance law in Baltimore County with the law in Maryland and emphasized that:

We conclude that the law in Maryland and in Baltimore County under its charter and ordinance remains as it has always been a property’s peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the ordinance’s more severe impact on the specific property because of the property’s uniqueness before any consideration will be given to whether practical difficulty or unnecessary hardship exists.

Id. When comparing the property at issue with other properties to determine ‘uniqueness,’ the terms ‘area’, ‘neighborhood’ and district have all been used interchangeably. (*Easter v. Mayor & City Council*, 195 Md. 395, 400 (1950) citing *Rathkopf, Zoning, 2d Ed.*, p. 215); *Marino v. City of Baltimore*, 215 Md. 206, 219 (1957); *Chelsey v. Annapolis*, 933 A.2d 475, 176 Md. App. 413 (Md.

App., 2007). The Court in *Cromwell, supra*, emphasized that the ‘uniqueness’ element of a property in Baltimore County must consist of a peculiar characteristic or unusual circumstance relating only and uniquely to the Property at issue, different and apart other properties in the neighborhood. This Property, like others in the neighborhood has a 1930s home with a 2-car garage in its rear yard.

If the Property is determined to be “unique,” then the issue of practical difficulty or unreasonable hardship must be decided. Toward this end, a variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. *McLean v. Soley*, 270 Md. 208 (1973); *Trinity Assembly of God v. People’s Counsel*, 407 Md. 53 (2008). To prove practical difficulty for an area variance, the Petitioner must produce evidence to allow the following questions to be answered affirmatively:

1. Whether strict compliance with the requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
2. Whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
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 at 214-215.

The law is clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell, supra*, Judge Cathell noted:

Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

Id. at 722. The Court of Special Appeals in *Montgomery County v. Rotwein*, 176 Md. 716, 732-33 (2006) citing *Cromwell*, held that economic loss alone does not satisfy the ‘practical difficulties’ test:

Economic loss alone does not necessarily satisfy the ‘practical difficulties’ test because, as we have previously observed, ‘every person requesting a variance can indicate some economic loss.’ *Cromwell* at 715.Indeed, to grant a variance application any time economic loss is asserted, we have warned, ‘would make a mockery of the zoning program.

As applied here, I find that the facts here do not satisfy the ‘practical difficulties’ test to justify approval of the variance. The alleged practical difficulty stems from: (1) the additional expense in constructing a replacement garage or adding onto the existing garage in the rear yard; and (2) Mr. Phillips desire to have a parking lot or storage yard of cars at his home. The 2-car, 400 sf, garage in the rear yard can, and should be used, for the parking of 2 vehicles. In this case, Mr. Phillips chooses to store and repair motorcycles in the existing garage which he then sells. The Petitioners purchased these 2 lots knowing the size limit and location between 2 streets. I find that the evidence presented by Mr. Phillips in regard to alleged practical difficulty are self-imposed hardships. The rear yard is consumed with the 2 car garage, a deck, a canopy/carport, and a shed. The Petitioners’ decision to retain these items in the rear yard, preventing its use for a larger garage, is their choice but not one that has arisen due to the uniqueness of the Property.

Furthermore, if Mr. Phillips’ version of facts is to be believed (i.e. that all of the vehicles stored are for his personal use and no commercial business is operating from the Property), then no practical difficulty has been suffered by the Petitioners as the storage and repair of vehicles is only a ‘hobby’ and therefore, not a necessity. Applying the 3-part test in *McLean*, there was no evidence that not having an additional 5-car garage in the side yard would unreasonably prevent

the Petitioners' use of the Property as a 'home.' While an additional garage in the side yard might be a nice feature and convenient for Mr. Phillips, I cannot find that not having an additional 5-car garage, particularly with the existence of a 2-car garage, canopy/carport and shed, would deprive the Petitioners 'use' of their Property. Indeed, the fact that the Property is improved with these existing structures confirms that the Petitioners are maximizing the use of the Property.

Moreover, under *McLean*, I do not find that denying an additional 5-car garage in the side yard would cause 'substantial injustice' to the Petitioners. At worst, the size of replacement garage could be reduced and therefore located in the rear yard, even if it may cost more money. Under the case law, economic hardship is not a reason for approving a variance.

Conversely, I find that granting this variance would cause substantial injustice to the neighborhood. Variance relief runs with the land and the proposed relief here would negatively impact this established neighborhood. In light of the extensive opposition to the Petitions by neighbors who have personal knowledge of the Petitioners' use of the Property to date, I find that the variance request cannot be granted within the spirit and intent of the BCZR because it will cause further harm to the health, safety and general welfare of this established neighborhood.

THEREFORE, IT IS ORDERED, this **6th** day of **October, 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing from the Baltimore County Zoning Regulations ("BCZR") §500.7 to approve an accessory building (garage) with a building footprint greater than the principle dwelling.is hereby **DENIED**.

IT IS FURTHER ORDERED that the Petition for Variance if necessary 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. are hereby **DENIED**.

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