

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
(8231 Rosebank Avenue)		
15 th Election District	*	OFFICE OF ADMINISTRATIVE
7 th Council District		
Glen Boyd	*	HEARINGS FOR
Petitioner	*	BALTIMORE COUNTY
	*	CASE NO. 2021-0236-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of a Petition for Administrative Variance filed by the legal owner of the property, Glen Boyd (“Petitioner”) for the property located at 8231 Rosebank Avenue, (the “Property”). The Petitioner is requesting Variance relief pursuant to the Baltimore County Zoning Regulations (“BCZR”) §§400.1, 400.3 and 415.A.1 as follows: **(1)** to permit an existing detached accessory structure (garage) and a proposed detached accessory use structure (carport) in the front yard and/or front and side yards in lieu of the required rear yard, with side yard setbacks of zero (0) ft. in lieu of the required 2.5 ft. setback; **(2)** to permit an existing detached accessory use structure (garage) with a height of 20 ft. in lieu of the required 15 ft. maximum height and a proposed detached accessory use structure (carport) with a height of 17 ft. in lieu of the required 15 ft. maximum height; and **(3)** to permit the parking of two (2) recreational vehicles [1 recreational vehicle and 1 boat over 16 ft. in length] in the front yard of an existing dwelling in lieu of the required side or rear yards with side setbacks of zero (0) ft. in lieu of the required 2.5 ft. side setback.

The Property and requested relief is more fully depicted on the site plan (the “Site Plan”) that was marked and accepted into evidence as Petitioner’s Exhibit 1. There were no Zoning

Advisory Committee (“ZAC”) received from any of the County reviewing agencies.

The Petitioner having filed a Petition for Administrative Variance and the subject property having been posted on August 31, 2021, and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented. The Petitioner has filed the supporting affidavits as required by BCC, §32-3-303.

DECISION

The Property consists of three (3) lots: Lots 50, 51, and 52. Petitioner also owns the adjacent Lots 49 and 53. Lots 51 and 52 are improved with a 2 story single family home which home was the subject of a Petition for Special Hearing in Case No.: 2013-0278-SPH (the “2013 Case”). In the 2013 case, the Petitioner was granted relief to construct a replacement dwelling in accordance with the site plan provided (“2013 Site Plan”). The 2013 Site Plan shows that the Property is located in a flood zone and is subject to Chesapeake Bay Critical Area (“CBCA”) requirements. The 2013 Site Plan also shows that the limits of disturbance (“LOD”) which may or may not include the proposed carport pad. In the Affidavit, the Petitioner wrote that a 40x30 concrete pad has existed in the same location since the 1960s and that he recently paved over it. However, the 2013 Site Plan does not show this concrete pad.

On Lot 50 is a detached 20 ft. tall, garage which sits on the Property line with Lot 49. Petitioner requests to construct a 17 ft. tall carport on the concrete/asphalt pad behind the garage, which pad now measures 1,015 sq. (35ft x 29ft). The carport is proposed to be used to park his camper, boat, cars and tractor. As depicted on the Site Plan, the garage is located in the front yard. Toward that end, he seeks variances for both the location, height and setback of the existing garage. Since the carport will be located directly behind the garage, it will be located

partly in the front yard, and partly in the side yard, but also directly on the property line with the adjacent property.

Based upon the information available, there is no evidence in the file to indicate that the requested area variances under BCZR, §400.1 for the existing garage to be located in the front yard with a 0 ft. side yard setback, and for the proposed carport to be located partly in the front yard, and partly in the side yard, with a 0 ft. side yard setback, would adversely affect the health, safety or general welfare of the public and should therefore be granted. Additionally, there is no evidence in the file that the variances requested under BCZR, §400.3 for the height of the existing garage, and height of the proposed carport, would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Administrative Law Judge, the information, photographs, and affidavits submitted provide sufficient facts that comply with the requirements of BCZR, §307.1 for the relief from BCZR, §400.1 and §400.3. For BCZR, §400.1 and §400.3, I find that strict compliance with the BCZR would result in practical difficulty and/or unreasonable hardship upon the Petitioner. However, the Petitioner will need to comply with all Floodplain and CBCA requirements.

However, in regard to the Variance request from BCZR, §415.A.1 to permit the Petitioner to park *both* his camper and boat over 16 ft. on the proposed carport, or any other place on the Property, that request must be denied. BCZR, §415.A.1 only permits the parking of 1 recreational vehicle. BCZR, §307.1 only authorizes an Administrative Law Judge to approve variances from height and area regulations in regard to the improvement on land as follows:

The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby

given the power to grant variances from height and area regulations...

I do not have the authority to grant Variance relief from a prohibition on the number of recreational vehicles permitted by BCZR to be parked on a property, or from other restrictions on parking a recreational vehicle in the front or side yards, or from the required setbacks for those parked recreational vehicles. Accordingly, all recreational vehicles must be parked on the Property as directed by BCZR, §415.A.1. Thus, given its location and proximity to the side yard of Lot 49, the carport could be used to park the Petitioner's car but not recreational vehicles.

Although the Department of Planning did not make any recommendations related to the existing detached garage height and usage, I will impose conditions that the detached garage shall not be converted into a dwelling unit or apartment, not contain any sleeping quarters, living area, kitchen or bathroom facilities, or used for commercial purposes.

Pursuant to the posting of the property and the provisions of both the BCC and the BCZR, and for the reasons given above, the requested variance relief from BCZR, §400.1 and §400.3 should be granted. The requested variance relief from BCZR, §415A.1 will be denied.

THEREFORE, IT IS ORDERED, this **17th** day of **September, 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from BCZR §400.1 and §400.3, as follows: **(1)** to permit an existing detached accessory structure (garage) and a proposed detached accessory use structure (carport) in the front yard and/or front and side yards in lieu of the required rear yard, with side yard setbacks of zero (0) ft. in lieu of the required 2.5 ft. setback; **(2)** to permit an existing detached accessory use structure (garage) with a height of 20 ft. in lieu of the required 15 ft. maximum height and a proposed detached accessory use structure (carport) with a height of 17 ft. in lieu of the required 15 ft.

maximum height be, and they are hereby **GRANTED**.

AND IT IS FURTHER ORDERED, that the Petition for Variance seeking relief from BCZR § 415A.1, to permit the parking of two (2) recreational vehicles [1 recreational vehicle and 1 boat over 16 ft. in length] in the front yard of an existing dwelling in lieu of the required side or rear yards with side setbacks of zero (0) ft. in lieu of the required 2.5 ft. side setback be, and it is hereby **DENIED**.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at his 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, Petitioner would be required to return the subject property to its original condition.
2. Petitioner or subsequent owners shall not convert the detached garage into a dwelling unit or apartment. The detached garage shall not contain any sleeping quarters, living area, and kitchen or bathroom facilities.
3. The detached garage shall not be used for commercial purposes.
4. Building materials for the carport addition shall be compatible with those of the existing principal dwelling.
5. The carport shall remain open on the three exposed sides and shall not be enclosed at any time.
6. The parking of all recreational vehicles on the Property must comply with BCZR, §415A.1 in regard to location and setbacks or be subject to Code Enforcement.
7. Petitioner must comply with all Floodplain and Chesapeake Bay Critical Area regulations prior to permitting.

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:dlw