

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(13012 Harewood Road)	*	OFFICE OF
15 <sup>th</sup> Election District		
6 <sup>th</sup> Council District	*	ADMINISTRATIVE HEARINGS
Brian Schmuff	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
Petitioner	*	<b>Case No. 2018-0292-SPHA</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing and Variance filed on behalf of Brian Schmuff, legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve a garage that has a footprint larger than the house. A petition for variance seeks to permit a proposed garage with a height of 16 ft. in lieu of the maximum allowed height of 15 ft. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Lee Giroux appeared in support of the requests. Several neighbors attended the hearing and opposed the requests. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and the Department of Environmental Protection and Sustainability (“DEPS”). Neither agency opposed the request.

**SPECIAL HEARING**

Ms. Giroux indicated Petitioner wanted to construct the proposed garage (40' x 40' x 16') to store a recreational vehicle (“RV”), although no photographs or description of that vehicle were submitted at the hearing. The neighbors testified they have never seen an RV at the property, but

they submitted photos of a large dump truck parked at the dwelling. The neighbors indicated Petitioner operates a commercial demolition and sweeping company, and they fear the garage would be used for commercial purposes.

Following the hearing, Petitioner submitted a written statement and attached certain documents including vehicle titles and utility bills. While these documents show the subject property is the address listed on Petitioner's Maryland driver's license and similar documents, they do not explain why a 40' x 40' garage is needed at the subject property, which already has a 2-car garage. In the written statement Petitioner indicates the garage would be used for a camper, boat and pickup truck, although the plan submitted at the hearing references only an "RV." In the circumstances of this contested, adversarial hearing it would not be appropriate or fair to the residents who attended the hearing to allow such a post-hearing submission. Without the benefit of photographs and Petitioner's testimony regarding how the garage would be used, I believe the special hearing request must 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).

The shape and size of Petitioner's property is similar to many other lots in this community. As such I do not believe Petitioner can establish the property is "unique," and the petition for variance must be denied. Under Maryland law, variances should be granted "sparingly" since it is "an

authorization for [that] ... which is prohibited by a zoning ordinance.” *Cromwell*, 102 Md. App. at 699.

THEREFORE, IT IS ORDERED this 20<sup>th</sup> day of **July, 2018**, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve a garage that has a footprint larger than the house, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Variance to permit a proposed garage with a height of 16 ft. in lieu of the maximum allowed height of 15 ft., be and is hereby DENIED.

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

\_\_\_\_\_  
Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:dlw