

IN THE MATTER OF
KRISTOPHER and MEAGAN HALLENGREN
LEGAL OWNERS AND PETITIONERS FOR
VARIANCE ON THE PROPERTY LOCATED
AT 12014 BOXER HILL ROAD

8th ELECTION DISTRICT
3rd COUNCIL DISTRICT

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No.: 23-053-A

* * * * *

OPINION

This case comes before the Board of Appeals for Baltimore County (“Board”) as an appeal of Baltimore County Administrative Law Judge, Paul Mayhew’s May 22, 2023, Opinion and Order denying a Petition for Variance filed by Kristopher and Meagan Hallengren for the property located at 12014 Boxer Hill Road (“the Property”), requesting variance relief from the Baltimore County Zoning Regulations (“BCZR”) §400.3 to permit a replacement accessory building (garage) with a height of 24 feet, in lieu of the maximum permitted height of 15 feet.

A *de novo* hearing was held before this Board on October 5, 2023, via WebEx. Petitioners were represented by Lawrence E. Schmidt, Esquire of Smith, Gildea & Schmidt, LLC. The Protestant, Michael Rifkin, appeared *pro se*.

Background

The Property is 1.630 acres in area, zoned R.C.4. It is located on Boxer Hill Road (near the intersection of Padonia Road and Falls Road) in the Cockeysville community of Baltimore County. The Property is improved with a detached single-family dwelling which is 1,936 square feet in area and was constructed in 1967. (See Petitioners' Ex. No. 9). In addition to the dwelling, there is an existing garage which is 38 feet by 24 feet in dimension and is 15 feet in height. This garage and driveway leading to it was constructed in 1992. (See Petitioners' Ex. No. 8). It is this

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garage which is proposed to be replaced and the new building will be 24 feet in height. The "new" garage will be on the identical footprint as the existing garage. Thus, it will have no larger footprint than the building that has been on the Property for over 30 years. In addition to the dwelling and garage, there is also a small storage shed in the rear yard of the Property. Access to the Property is via a fairly long asphalt driveway which leads from Boxer Hill Road and then circles the garage. There were a series of photographs that were submitted at the hearing that depict the Property and the improvements thereon, including the significant amount of vegetation and landscaping that buffers the view of the improvements (and most significantly the garage) from adjacent properties and the public street. (See Petitioners' Ex. No. 5 and 6.) There are no public facilities (water and sewer) in the area and therefore the Property also includes a well and septic system.

On or about February 25, 2023, Petitioners applied for a variance to permit a replacement accessory building (garage) with a height of 24 feet, in lieu of the maximum permitted height of 15 feet. Petitioners applied for the variance administratively. The Protestant requested a hearing where testimony could be presented.

On or about May 22, 2023, after a hearing, Administrative Law Judge, Paul Mayhew, denied Petitioner's Administrative Variance request. The denial was based on the fact the Petitioner's Administrative Variance request did not meet the legal standard for variance approval. Petitioners filed a timely appeal.

During the hearing in front of this Board, Petitioner, Kristopher Hallengren, testified that he resides in the home with his wife and two children. They purchased the property in 2010. Petitioners desire to rebuild their detached garage on the same footprint, adding a second floor. This would be to provide his family with some needed space. The second floor would contain a

gym, an office and a recreation room. The office would be used part time by Petitioner and his wife when they bring work home. As previously stated, the garage is currently 15 feet high. The proposed garage would be 24 feet high.

Petitioner described the topography of his property. The property slopes from right to left and from front to back. (See Petitioner's Exhibit 5A). The garage sits significantly lower than the house itself. The top of the garage is at approximately the same level as the first floor of the house. (See Petitioner's Exhibit 5F and 5G).

The lot Petitioners own was once part of a larger lot (approximately six acres). The lots were subdivided into two separate lots. The larger property, which is owned by David and Jan Chapin, almost surrounds Petitioner's property. (See Petitioners' Exhibit 3A). This is unlike the other lots in the surrounding neighborhood.

Petitioner also discussed the wells on his property. Just outside the garage there are two wells in the ground. Both are to the side and rear of the yard. One of the wells belongs to the Petitioner. The other belongs to their neighbor, Mr. Hudson Myers. The Petitioner's well actually sits partially under the asphalt driveway adjacent to the garage. Mr. Myers' well is about 14 feet from Petitioner's well. Both are located on Petitioner's property.

Petitioner testified that they considered an addition to the house itself but because of its layout, it would not make practical sense. To add an addition that would increase the footprint of the house would require a variance. The rear of the house is a deck and a stone patio. Additionally, their septic system is located in the rear. The left side of the house sits on a severe slope with a retaining wall and a chimney. On the right front side is where the Petitioner's water line is located.

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Petitioner testified that the proposed garage would have no adverse impact on the neighborhood. The well and septic systems would not be disturbed and the vegetation in front of the garage would continue to conceal the garage.

Mr. Patrick Richardson, Jr., a licensed engineer at Richardson Engineering, LLC, testified next. Mr. Richardson was accepted as an expert professional engineer and as an expert in the Baltimore County Zoning Regulations. He prepared and submitted the site plan for the zoning variance application.

Mr. Richardson discussed the zoning history of the property. The zoning for the property was changed in 2000 from R.C.5. to R.C.4. In the R.C.5. zone, there is no limit for lot coverage, only building coverage. The current lot coverage of this property would meet the requirements for R.C.5. In the R.C.4. zone, total lot coverage can only be 10%. This would include the buildings as well as all other surfaces such as the driveway. Petitioner's property currently has a lot coverage of approximately 18%. Because the property was non-conforming when the zoning was changed from R.C.5. to R.C.4., it is considered grandfathered in, however, it cannot be expanded.

Mr. Richardson also discussed the unique characteristics of the property. The configuration of the property is unique due to the shape of the lot. He also stated that he has never seen a property that contains someone else's well as this property does. He also described how much lower the garage sits from the house itself. This is due to the severe slope on the property right next to the house. Also, because of the wells, waterline and where the garage sits, it cannot be expanded outwards.¹ The only conceivable way to expand the garage is to build

¹ There is a recorded easement regarding the well and water line in the Baltimore County Land Records, Liber 3172, page 474.

upward. Another unique characteristic relating to the property is the off-site stream which creates a “forest buffer” on the property. This further reduces the ability to expand the footprint of the garage. Additionally, Mr. Richardson stated that because of the change in zoning from R.C.5. to R.C.4., they can’t increase the lot coverage due to the limitations on impermeable surfaces.

The Protestant, Michael Rifkin, testified next. He and his wife live across the street from Petitioners at 12015 Boxer Hill Road. He feels that the granting of a variance would do an injustice to the neighborhood. He argued that the Petitioner’s property is not dissimilar to many other properties in the area. He does not feel that the addition of an office and a gym are urgent necessities.

Mr. Henry Hudson Myers, III also testified. He resides at 12100 Boxer Hill Road. Mr. Myers is concerned about how the granting of a variance would impact the neighborhood.

Conclusion

The threshold issue in this matter is whether the Petitioners have met the test for entitlement to a variance as established in *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995).

In order to grant a variance, Baltimore County Zoning Regulations (BCZR) § 307.1 states, as relevant:

“...The County Board of Appeals...shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship...Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare...”

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In order to obtain a variance in this instance, Petitioner first must prove the uniqueness of the property and then that such uniqueness results in practical difficulty. *See Cromwell v. Ward*, *supra* 102 Md. App. at 703-722; 651 A.2d at 430-440. The uniqueness element requires that the subject property have an inherent characteristic not shared by other properties in the area, such as, shape, topography, sub-surface 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. *Id.*, 102 Md. App. at 710-11; 651 A.2d at 433-34, citing *North v. St. Mary's County*, 99 Md. App. 502, 514-15; 638 A. 2d 1175 (1994).

The second step of the variance test examines whether the disproportionate effect of the ordinance, caused by the uniqueness of the property, creates practical difficulty for or unnecessary hardship on the owner of the property. *Cromwell*, 102 Md. App. at 694-95. With respect to practical difficulty, there is a three-part review: (1) whether compliance with the strict letter of the restrictions governing area, setbacks, etc., would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome; (2) whether a grant of the variance would do substantial justice for the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners; 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. *Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel*, 407 Md. 53, 83-84; 962 A.2d 404, 422 (2008), citing *McLean v. Soley*, 270 Md. 208, 214-15; 310 A.2d 783, 787 (1973). The hardship at issue cannot be self-created. *Cromwell*, 102 Md. App. at 721-22; 651 A.2d at 439-40.

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The first determination is that of uniqueness of the property. Based on the evidence presented and the testimony of the Petitioner, the Board is convinced that the property is unique. Petitioner's property was once part of a much larger lot (six acres). In around 1991, long before Petitioners owned the property, the lot was subdivided, and Petitioner's lot was carved out of the larger lot. Petitioner's lot became 1.63 acres. This is not a standard lot size for this neighborhood. For example, Mr. Rifkin's lot is just over one acre in area. The Myers property is 1.85 acre in area. The Chapin property, which is the remaining property from the subdivision described above, which sits to the rear and left of Petitioner's property, is 4.1 acres in area. Additionally, the lot is not shaped like any of the other lots in the neighborhood. (See Petitioners' Exhibit 3B).

A very distinct characteristic of the property, which alone makes the property unique, is the dramatic sloping of the yard between the house and the garage. When facing the lot from Boxer Hill Road, the Property slopes right to left. The house sits much higher (15+ feet) than the garage, in fact, evidence was presented that the first floor of the house is at the same level as is the peak of the existing garage. The severity of the slope is at its' greatest at the most impactful location; namely, between the house and the garage. The topographical lines on the site plan (Petitioners' Exhibit 2B) clearly demonstrate that the grade change is most severe immediately adjacent to the garage. The house and the garage are within close proximity. A retaining wall exists between the house and the garage evidencing the significant grade change between the garage and the house as the access to the garage sits below the house's basement level.

The Protestant contends that numerous neighborhood properties have sloping yards. However, Mr. Richardson notes that while this may be accurate, none of the other properties exhibit slopes as severe as those surrounding the Petitioners' property.

When the property was developed and when the garage and driveway were built, the Property was zoned R.C.5. The R.C.5. zone imposes no limitation on the amount of impermeable surface on a lot, rather, it only limits the number of buildings that can cover a lot to 15% of the area of the lot (See BCZR IA04.3.B.3). The Property was/is compliant with that standard. However, the Property's zoning was changed in 2000 to R.C.4., and thus the R.C.4. regulations govern any future building and development of the Property. Under the R.C.4. regulations (See BCZR IA03.4.B.3) "impermeable surface" is limited to 10% of the area of the lot. This restriction is at the very essence of the purpose of the R.C.4. zone, which was adopted to provide a zone which protects the reservoirs and drinking water provided to the Baltimore Metropolitan area. As shown on the site plan (Petitioners' Exhibit 2B, Note 24), the Property is currently at 18% impermeable surface, including the house, garage, shed and driveway. Thus, although the Property is grandfathered to its current impermeable area, that area cannot be further increased as such would be in violation of that limitation. It is also important to note that while the zoning was changed for Petitioner's property to R.C.4. in 2000, it was not changed for most of the remainder of the neighborhood. These other properties remain zoned R.C.5. (See Protestant's Exhibit 12).

Another characteristic which makes it unique is the existence of Mr. Myers' well and water line on this property. As previously stated, Mr. Myers has a recorded easement for the well and water line. The well is located just to the rear of the garage and the water line from the well runs through Petitioner's property to Mr. Myers' property.

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With respect to the second determination, that of practical hardship or unnecessary hardship, the Board is also convinced that this requirement is satisfied. Compliance with the strict letter of the restriction would certainly render conformity with the restriction unnecessarily burdensome.

Because of the current zoning of the property, Petitioners are prohibited from, without a variance, expanding the footprint of any of the dwellings on their property. Even if they were permitted to do so, based on the evidence and testimony, adding on to the house would be near impossible due to the topography, the existing structures on the property, and the existing wells and water lines running on the side, front and rear of the house.

As far as attempting to somehow attach the garage to the house, that too would be unreasonably burdensome. A retaining wall exists between the house and the garage evidencing the significant grade change between the garage and the house as the access to the garage sits below the house's basement level. This factor makes it impossible to attach the garage to the house. The severity of the slope also limits the access point to the garage to its' existing location. That is, the driveway cannot be re-located or reconfigured.

The Board further finds that the granting of this variance would do substantial justice to the applicant as well as to other property owners in the district. The design of the proposed garage certainly fits in with the character of the neighborhood. (See Petitioners' Exhibits 10A-F). Additionally, the garage currently sits extremely low compared to the level of Boxer Hill Road. As previously discussed, the garage roof is currently on an even level with the first floor of the Petitioners' house. An additional nine feet would still have the garage sitting significantly lower than the top of the house. The presence of trees concealing the garage from the road supports the fulfillment of this requirement. Currently, the trees surpass the garage's height, and

even with a nine-foot addition, they would still obscure the top of the garage. Should any of the existing trees screening the garage die off, the Petitioner must immediately replace them with fast-growing evergreens. Additionally, no windows shall be placed on the side of the garage closest to the Rifkin property.

Lastly, the Board finds that the relief requested is in keeping with the spirit of the ordinance and public safety and welfare is secured. There is no evidence that the granting of the variance would adversely impact public safety and welfare whatsoever. In that the Petitioner had persuaded this Board that both prongs of the *Cromwell* analysis have been met, the requested variance relief is **GRANTED with conditions**.

ORDER

THEREFORE, IT IS THIS 25th day of January, 2024, by the Board of Appeals of Baltimore County,

ORDERED that the Petition for Variance to permit a replacement accessory building (garage) with a height of 24 feet, in lieu of the maximum permitted height of 15 feet, be and is hereby **GRANTED with the following conditions:**

1. If any of the current trees screening the garage from view die off, the Petitioner must immediately replace them with fast-growing evergreens; and
2. No windows shall be placed on the side of the garage closest to the Rifkin property.


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Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS OF
BALTIMORE COUNTY**


Deborah Dopkin, Panel Chair


Sharonne R. Bonardi


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Board of Appeals of Baltimore County

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January 25, 2024

Lawrence E. Schmidt, Esquire
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600 Washington Avenue, Suite 200
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Michael and Carol Rifkin
12015 Boxer Hill Road
Cockeysville, Maryland 21030

RE: In the Matter of: *Kristopher and Meagan Hallengren*
Case No.: 23-053-A

Dear Messrs. Schmidt and Rifkin:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all **Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Sunny Cannington".

Krysundra "Sunny" Cannington
Legal Administrative Secretary

KLC/taz
Duplicate Original Cover Letter
Enclosure

c: Kristopher and Meagan Hallengren
Patrick C. Richardson, Jr./Richardson Engineering, LLC
Hudson and Karen Myers, III
Barbara Loughlin
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney/Office of Law