

IN RE: <b>PETITION FOR VARIANCE</b>	*	BEFORE THE
NW/Side Bart Allen Lane, 755' NW of		
East Devonfield Drive	*	ZONING COMMISSIONER
<b>(4803 Bart Allen Lane)</b>		
11 <sup>th</sup> Election District	*	OF
3 <sup>rd</sup> Council District		
	*	BALTIMORE COUNTY
Brian Znamirovski, et ux		
Petitioners	*	<b>Case No. 2009-0184-A</b>

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**MEMORANDUM OPINION AND ORDER**

This matter comes before the Zoning Commissioner for a public hearing on a Petition for Variance filed by Brian P. Znamirovski and his wife, Robin L. Znamirovski, through their attorney, Howard L. Alderman, Jr., Esquire, with Levin & Gann, P.A. The variance request is from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit the construction of an accessory building (garage) to be located in the side yard in lieu of the rear yard<sup>1</sup>. The Protestants, Edward L. Healy and Mary Louise Healy, his wife, own adjacent property (east side) next to where the proposed structure is to be erected and retained Francis X. Borgerding, Esquire to oppose the requested variance. This Memorandum and Order will briefly address the facts and arguments presented by the parties with respect to the structure and its proposed location. The dominant problem presented in this case is that the same issue was raised and fully litigated in 2007.

By way of background, the property known as 4803 Bart Allen Lane, shown as Lot 4 on a plat entitled Beckwith Estates, south of Carroll Manor Road in Baldwin, was the subject of prior Case Nos. 07-281-A and 07-332-SPHA. In Case No. 07-281-A, Mr. and Mrs. Znamirovski were granted variance relief from B.C.Z.R. Section 1A04.3.B.2.b by the then Deputy Zoning Commissioner John V. Murphy, to allow a rear yard setback of 40 feet in lieu of

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<sup>1</sup> Section 400 of the B.C.Z.R. pertains to accessory buildings in residential zones and mandates their location only in the rear yard . . . with a height limitation of 15 feet.

the required 50 feet for the construction of a garage addition. Deputy Commissioner Murphy next heard Case No. 07-332-SPHA in March 2007 involving the Petitioners request to build a detached accessory structure (garage) in the side yard at a height of 28 feet in lieu of the required rear yard and 15 feet. The need for a 28-foot height was driven by Petitioners desire for a second story apartment to be used as an in-law residence for their parents. In his approval, Murphy found that the rear yard of Znamirovski's property was constrained "*by the extensive forest buffer easements and septic reserve area*". He went on to state, "*These are the kind of special conditions which make the impact of the zoning regulations different on the subject property when compared to others in the district*".

A timely appeal of this Commission's decision was then filed by Edward Healy to the County Board of Appeals (CBA). Peter Max Zimmerman, People's Counsel for Baltimore County, participated in the proceedings on behalf of his office. The CBA, after fully adjudicating the issues at a *de novo* hearing held June 27, 2007, reversed the Deputy Zoning Commissioner deciding that there was "no uniqueness to the property that would allow for the granting of a variance permitting an accessory structure to be built in the side and front yards . . ." and unanimously denied the variance requests. As aptly pointed out by Protestants' counsel, the case was fully litigated; the decision of the CBA was not appealed and, therefore, constitutes a final binding Order. To the extent applicable, the findings and conclusions set forth in the Board's Opinion and Order dated November 20, 2007 (Case No. 07-332-SPHA) are adopted by reference and incorporated herein). On March 18, 2009, a new hearing was held before the undersigned on the instant Petition and the Petitioners and Protestants presented testimony and evidence.<sup>2</sup> For the reasons set forth below, the relief requested will be **DENIED**.

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<sup>2</sup> Brian and Robin Znamirovski presented five (5) exhibits demonstrating what they characterize as substantial changes subsequent to the CBA decision while Protestants offered photographic exhibits and the site plan previously filed in Case No. 07-332-SPHA to refute these characterizations.

This case arises from Petitioners continued desire to build a two-story accessory structure in the northeast corner of their property that is zoned R.C.5 and contains 2.016 acres. The first floor would contain three (3) bays and would be used to store antique automobiles. The second story would be used for storage. David Billingsley, with Central Drafting, Inc., prepared the site plan (Petitioners' Exhibit 1) and testified as to the contrasting differences between the current plan and the previous one in Case No. 07-332-SPHA as follows:

- The new garage as depicted on the building elevations submitted (*See* Petitioners' Exhibit 4) will contain no living quarters and is reduced in size (36' wide x 30' deep x 15' in height), a reduction of 800 square feet. Its location will now be 11 feet off of the northern property line (instead of the previous 10 feet) and 15 feet from the eastern boundary (instead of the previous 5 feet).
- The second story will feature a 9/12 roof pitch and feature dormers and a window on the east side with exterior siding and shingles to match the principal dwelling. B.C.Z.R. Section 260.6 contains residential performance standards and states "Design accessory structures at a scale appropriate to the dwelling and design storage buildings and garages with the same architectural theme as the principal dwelling on the site, providing consistency in materials, colors, roof pitch, and style." There can be no question but that the garage meets these standards and Mr. Billingsley opines that the proposed location would look better and be more compatible than attempting to cram it into the rear yard portion of the lot.
- Further, testimony and evidence offered, including a series of photographs produced, depict where the required height of the garage will be measured. Section 101 of the B.C.Z.R. defines "building height" as "the height of the highest point on a building or other structure as measured by the vertical distance from the highest point on the structure to the horizontal projection of the closest point at exterior grade". As noted on the modified garage plan and photographs, the garage is to be built into a hill/elevation change, which results in a building height

- Testimony concerning special circumstances and uniqueness driven by site and environmental constraints including the house orientation by others, forest conservation easement encumbrance of 30% of the rear lot, existence of the septic system and the 10,000 square foot septic reserve area and well location – as well as the practical difficulty, if variance relief were not granted was essentially the same as presented to the CBA as previously adopted herein.
- On cross-examination, Mr. Billingsley to his credit stated that this was not the only location the garage could be placed on the lot. While believing it to be the best location, he admitted a garage could be placed in the rear yard behind the house without the need of relocating the existing well. The rear yard is flat and currently serves as the Petitioners’ children’s play area.

I find the same issues raised and litigated in 2007 are the same issues as the instant case by the same parties for the same site. The doctrines of res judicata and collateral estoppel apply to administrative decisions. *Batson v. Shiflett* v. 325 Md. 684, 704-705 (1992); *Century I Condominium Ass’n v. Plaza Condominium Joint Venture* 64 Md. App. 107, 113-114 (1985). The Court of Appeals has consistently applied these doctrines in zoning cases. *Fertitta v. Brown* 252 Md. 594 (1969); *Chatham Corp. v. Baltram* 243 Md. 138 (1966); *Woodlawn Area Citizens Ass’n v. Board of Co. Com’rs.* 241 Md. 187 (1966); *Whittle v. Board of Zoning Appeals*, 211 Md. 36 (1956).

The doctrine of collateral estoppel is also known as “issue preclusion”. It stands for the proposition that matters actually litigated and resolved against a party in a proceeding are considered to have been finally adjudicated for the purpose of a subsequent proceeding even where the subsequent proceedings differ in form. *See Jones v. State*, 350 Md. 284, 295 (1998); *MPC, Inc. vs. Kenny*, 279 Md. 29, 34-36 (1977); *Pat Perusse Realty v. Lingo* 249 Md. 33, 43-45 (1968); *Prescott v. Coppage* 266 Md. 562, 570-573 (1972). Here, the Petitioners, Mr. and Mrs. Znamirovski, requested essentially the same relief for the same site under the same regulations and zoning laws. They are bound by the CBA decision of 2007. Res judicata precludes re-litigating the matter. This finding absent fraud, mistake or inadvertence prevents this Commission and the administrative body from reversing the prior decision. This conclusion can be of no comfort to the Petitioners who have expended great time, effort and expense in attempting to use their property for what they believe to be a reasonable and significant use.

In this case, and as previously stated, the Deputy Zoning Commissioner in his Order involving substantially the same issues found that the subject property was unique in the sense required by *Cromwell v. Ward*, 110 Md. App. 691 (1995). The CBA respectfully disagreed. In summation, I have considered the arguments and evidence presented. While it is quite clear that the issues raised by Petitioners were also before the CBA in Case No. 07-332-SPHA, it was also illustrated through photographs and testimony presented at the hearing (*See* Petitioners’ Exhibit 3) that sufficient room exists in the rear yard to locate the garage in conformance with the zoning regulations. Unfortunately for these Petitioners, I find the problem here is a personal one and is not a problem inherent in the land itself or in the application of the B.C.Z.R. to the land.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth herein, the relief requested shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 24<sup>th</sup> day of March 2009 that the Petition for Variance from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve an accessory building (garage) to be located in the side yard in lieu of the rear yard, be and is hereby DENIED.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

WJW:dlw

SIGNED  
WILLIAM J. WISEMAN, III  
Zoning Commissioner  
for Baltimore County

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