

IN RE: <b>PETITION FOR VARIANCE</b>	*	BEFORE THE
N/S Old Court Road, 570' W of		
Granite Road	*	ZONING COMMISSIONER
<b>(10212 Old Court Road)</b>		
2 <sup>nd</sup> Election District	*	OF
4 <sup>th</sup> Council District		
	*	BALTIMORE COUNTY
Thomas J. Byrne, et al		
Petitioners	*	<b>Case No. 2010-0172-A</b>

\* \* \* \* \*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owners of the subject property, Thomas J. Byrne, and his son, Baron Jay Byrne.<sup>1</sup> The Petition was filed in response to a complaint registered by the Code Enforcement Division of the Department of Permits and Development Management (DPDM) relative to the use of the subject property (Case No. 69441). In this regard, the Petitioners seek relief from Sections 400.1 and 1A01.3.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow two (2) existing accessory structures (carports) to be located in the front yard in lieu of the required rear yard, and to allow said structures to be as close as 4 feet from a side property line and 15 feet from the street centerline in lieu of the required 35 feet and 75 feet, respectively. The subject property and requested relief are more particularly described on the site plan and photographs submitted which were accepted into evidence and marked as Petitioners' Exhibits 1 (site plan) and 2 (photographs).

Appearing at the requisite public hearing in support of the request were Thomas Byrne, property owner, and his daughter-in-law, Donia J. Byrnes. There were no Protestants or other interested persons present; however, it is to be noted that the Office of Planning submitted a Zoning Advisory Committee (ZAC) comment recommending a denial of the requested variances and removal of the carports.

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<sup>1</sup> Baron Byrne's name appears on the Deed for estate purposes. He and his wife, Donia J. Byrne, do not reside on the property and own their own single-family residence located in Anne Arundel County.

Testimony and evidence offered disclosed that the subject property is an irregularly shaped parcel located in the Granite/Woodstock area of Baltimore County not far from the Howard County line. It has 148 feet of frontage along the north side of Old Court Road, then widens to 484 feet at the rear boundary line and contains a gross area of 4.95 acres, more or less, zoned R.C.2. As evidenced by the Department of Assessments and Taxation, the property is designated as Parcel 86 on Tax Map 86 and improved with a two-story, single-family dwelling built in 1931. The Petitioners have owned the property since 1997 and have made substantial improvements raising its value from \$52,374 (1997) to over \$210,000 (2009). Thomas Byrne provided photographs depicting the home's condition when purchased and what it looks like today. Compare Petitioners' Exhibits 3 and 4. At issue in this case are the carports purchased from and erected by Carolina Carports in 2008. At that time, the contractor informed Mr. Byrne that no building permits were required and proceeded to locate one of the carports on the eastern side of the lot, the other on the western side. *See* photograph Exhibits 2A and 2B. Little did Thomas Byrne realize, at that time, that the carports would become complicated by Sections 400.1 and 1A01.3.B.3 requiring accessory structures to "be located only in the rear yard" and any front yard structure, whether the principal dwelling or otherwise to be setback and situated no closer than "within 75 feet of the centerline of any street or within 35 feet of any lot line other than a street line".

The Petitioners nightmare began in November 2009 when the Department of Permits and Development Management (DPDM), the agency that issues building permits, received an inquiry questioning the accumulation of debris and contractor's materials on the property. Code Enforcement Officer Latoshia Rumsey-Scott visited the site and issued a "Correction Notice" informing the Petitioners that they would need to bring the property in conformance with the zoning regulations and the illegal accessory structure(s) placement.

Mr. Byrne described the site constraints associated with the property, including the existence of a substantial drop-off in the topography that begins at the front building line of his home and then descends down for a distance of 81 feet to a stream that bisects the property's rear

yard. Photographs of the constraints were submitted. When asked why the accessory structures could not be located to the western side of his house, he indicated the existence of a septic system in this area. In sum, it was his opinion that the current location's were most appropriate, and that relief should be granted to allow reduced setbacks in order that he can continue to safely store his vintage 1929 and 1931 Mercedes-Benz roadsters in one carport and use the other for his farm tractor and automobile (shown in carport photograph exhibits). He asserts that he is getting up in his years (will turn 79 in five [5] months) and is retired with health problems and physical limitations. The carports have existed at their present location for two (2) years without complaint and provide a convenient place for out of weather storage. Mr. Byrne testified as to the practical difficulty and unreasonable hardship he has endured since receiving the Correction Notice, which has left him in an untenable position. In response to the Office of Planning's comment - that the western carport blocks the visual sight lines for the neighbor residing at 10220 Old Court Road when exiting his driveway, Mr. Byrne states that Carroll E. Marr is his friend, is 97 years old, doesn't drive and has no objection with regard to the carports location. He further points out, as shown on Petitioners' Exhibit 2A, that Mr. Marr's trees and shrubbery have been placed at the joint property line and block sight lines much more than his carport.

Mr. Byrne testified that he placed the carports in their present location for the reasons indicated above and was not aware of any County restriction that would prevent him from doing so. To a certain extent, I am sympathetic to Mr. Byrne's plight. A search of the Zoning Commissioner's records fails to disclose any variances applied for or granted for similar relief in this area. If other carports or accessory structures in the Woodstock area have been erected over time, they have done so in disregard of the zoning regulations. Variance relief can be granted only if the requirements contained in Section 307 of the B.C.Z.R. are met. This section states that the Zoning Commissioner may grant variances;

*... 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 of Baltimore County would result in practical difficulty or unreasonable hardship.*

Variations are not favored under the law and presumed to be in conflict with the regulations. As stated in *Cromwell v. Ward*, 102 Md. App. 691, 703 (1995):

*The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances.*

Any proposed construction in the front yard mandates close scrutiny. The impact of building in this area will be greater than the same proposal in the rear yard. Weighing all the testimony and evidence on this issue, I am persuaded to agree with the Office of Planning that granting front and side yard variations would adversely impact the neighborhood. Communities simply look nicer if the view from the street is the grandest, prettiest part of the house – the formal front entry to the home. Aesthetics demand that the “front” should be the most attractive.

After due consideration of all the testimony and evidence presented, I find that the Petitioners’ property, while constrained, is substantially similar to other properties as to the size, shape, and topography. As such, it does not meet the requirements for a finding of uniqueness as set forth in *Cromwell*. I cannot decide this case based on “extenuating circumstances”. Having determined that no uniqueness exists as to the Petitioners property, I must therefore deny the variance requested by the Petitioners. I do, however, find extenuating circumstances. So often in this job, there is never a correct decision – but as the case here demonstrates one that seems not right, but simply less wrong. Thus, in denying the Petitioners’ variance and as discussed at the hearing, I am persuaded to grant some relief that will be personal in nature to Thomas Byrne and limited in duration.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth above, the relief requested shall be partially granted and limited prior to the ultimate denial taking effect.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 28<sup>th</sup> day of January 2010 that the Petition for Variance seeking relief from Sections 400.1

and 1A01.3.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow two (2) existing accessory structures (carports) to be located in front of the principal dwelling in lieu of the required rear yard, and to allow said structures to be as close as 4 feet from the side property lines, and 15 feet from the street centerline in lieu of the required 35 feet and 75 feet, respectively, in accordance with Petitioners' Exhibit 1, be and is hereby PERMITTED in limited duration, prior to the DENIAL becoming final, subject to the following conditions which are restrictions precedent to the limited approval granted herein:

1. The Petitioners are hereby made aware that proceeding at this time is at their own risk until the thirty (30) day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
2. The temporary variance relief granted to the Petitioners herein is personal in nature, limited in duration, and shall not run with the land so as to inure to the benefit of any subsequent property lessee or owner. To assure the current and future use of the subject property, the Petitioners will, within sixty (60) days of the date hereof, record in the Land Records of Baltimore County a Covenant to the Deed for their property (in the form attached) restricting the use of the property.
3. Said Covenant shall contain the proviso that such use shall terminate upon the sale of the property or the passage of five (5) years, whichever comes first. The carports shall then be removed and the property brought into compliance with the zoning regulations.
4. A copy of the recorded Covenant shall be submitted to the Department of Permits and Development Management (DPDM) for inclusion in the case file.
5. The decision in this case is not a legal precedent that may be cited as such in any other zoning case.

Any appeal of this decision shall be entered within thirty (30) days of the date hereof.

WJW:dlw

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

**COVENANT AND DECLARATION OF UNDERSTANDING**

Whereas, in a Petition for Variance before the Zoning Commissioner of Baltimore County, Case No. 2010-0172-A, Thomas J. Byrne, and his son, Baron Jay Byrne, the Petitioners, requested permission to maintain two (2) existing accessory carports in the front yard of the principal dwelling in lieu of the required rear yard with 4-foot side yard setbacks in lieu of the minimum 35 feet required by the regulations, and the Zoning Commissioner, by Order, dated January 28, 2010, partially granted the request providing the following covenant be added to their Deed, which Deed was recorded in the Land Records of Baltimore County, at Liber 12367, Folio 355.

Thomas and Baron Byrne hereby covenant that the carports on the front east and west sides of the property shall be removed from their present locations or relocated to the rear of the property upon the sale of the property or after a period of five (5) years from the date of this Covenant, whichever occurs first.

As witness our hands and seals this \_\_\_\_\_ day of March 2010.

\_\_\_\_\_(SEAL)

Thomas J. Byrne

\_\_\_\_\_(SEAL)

Baron Jay Byrne

(State of Maryland

To wit

County of Baltimore)

I HEREBY CERTIFY THAT ON THIS \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me a Notary Public of the State of Maryland, in and for Baltimore County, personally appeared Thomas J. Byrne and Baron Jay Byrne, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument, and acknowledge that they executed the same for the purposes therein contained, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and Notarial Seal:

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: