

IN RE: PETITION FOR VARIANCE

N side od Jarrettsville Pike; 510 feet S
of Whitesworth Road
10th Election District
3rd Councilmanic District
(14006 Jarrettsville Pike)

Lubomir G. Todorov
Petitioner

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY
* **CASE NO. 2010-0217-A**

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owner of the subject property, Lubomir G. Todorov. Petitioner is requesting Variance relief from Section III “A” Residence Zone A.13 (1945-1953 B.C.Z.R.) of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an accessory structure (carport) in the front yard in lieu of the required rear yard.¹ The subject property and requested relief are more fully depicted on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the variance request was Petitioner Lubomir G. Todorov and Bernard E. Mills, a friend of Petitioner who assisted in preparation of the site plan and Petition for Variance. Appearing in opposition to the requested relief were Glen Thomas, President of the Greater Jacksonville Association, Inc. and Bill Shaughnesey, former President of the Greater Jacksonville Association, Inc. and current member of the Board of Directors of that organization. Also appearing in opposition to Petitioner’s request was Mary Matra, adjacent neighbor of the subject property to the east, residing at 14010 Jarrettsville Pike. There were no other Protestants or interested citizens in attendance at the hearing.

¹ Although the Petition was filed for Variance relief pursuant to Section III “A” Residence Zone A.13 (1945-1953 B.C.Z.R.) of the Baltimore County Zoning Regulations (B.C.Z.R.), under today’s Regulations, the Petition would be filed pursuant to Section 400.1 of the B.C.Z.R.

It should be noted that this matter came before me as a result of a complaint registered with the Code Enforcement Division of the Department of Permits and Development Management.² A Code Inspections and Enforcement Correction Notice was issued to Petitioner on November 17, 2009 for construction of the subject carport structure without obtaining a permit and placement in the front yard rather than the permitted rear yard. Hence, Petitioner filed the instant request for a variance.

Testimony and evidence offered revealed that the subject property is an irregular, triangularly shaped parcel consisting of approximately 1.19 acres, more or less, zoned R.C.6, and located in the Jacksonville area of Baltimore County, on the northwest side of Jarrettsville Pike with ingress/egress from same. The subject property is improved with a single-family dwelling built in 1956, according to the Real Property Data Search printout that was marked and accepted into evidence as Petitioner's Exhibit 3, and consists of an enclosed area of 992 square feet. The surrounding community is heavily wooded and predominantly residential. Aerial satellite images of the subject property and the surrounding community were marked and accepted into evidence as Petitioner's Exhibits 4A and 4B.

As background to the zoning relief requested, Petitioner Lubomir Todorov, testified that he relocated to the United States in 1991 and has since operated various cleaning and janitorial businesses. Mr. Todorov stated that the subject property was purchased with his nephew in 2005 and at the time of purchase was in a state of disrepair.³ Mr. Todorov indicated that since the purchase of the subject property he has made significant and substantial improvements to the property. As part of this continued effort to renovate the subject property, Petitioner built a

² Case No: CO-0071093

³ The Deed evidencing this purchase is recorded as Liber-Folio 22079-493.

carport in the side/front yard of the subject property. The construction of this carport drives the need for variance relief.

Photographs of this metal-framed carport were marked and accepted into evidence as Petitioner's Exhibits 6A through 6H, as well as Protestant's Exhibits 1A through 1C that were submitted by Mr. Shaughnesey. Further testimony indicated that the carport was built to house additional personal and business vehicles of the Petitioner. Petitioner and Mr. Mills explained that relief in this instance is appropriate because in order to place the structure in the rear of the property, extensive excavation to level and grade the land would be required. Moreover, the rear yard of the property has several mature oak and pine trees that would need to be removed to place the carport in the rear of the house. Further, Petitioner indicated that the location of the septic system in the rear of property combined with the lot configuration and the aforementioned factors renders the property unique and that strict compliance with the Regulations would cause unreasonable hardship. The testimony given at the hearing echoed the contents of a letter of explanation from Mr. Todorov that was marked and accepted into evidence as Petitioner's Exhibit 5.

Testifying in opposition to Petitioner's request for relief was Glen Thomas of the Greater Jacksonville Association Inc., which is composed of approximately four-hundred homes. He testified that practically all the lots and parcels in the Jacksonville area contain mature trees. Moreover, Mr. Thomas stated that this is a residential community composed of modest homes with deep lots; moreover, there have been a series of complaints that the subject property was being used for commercial purposes and that the existing carport was for such a commercial use. Bill Shaughnesey similarly testified in opposition to Petitioner's petition for relief, indicating that the carport in dispute is incompatible with the neighborhood and out of character with the

community's pattern of development. As to the alleged uniqueness of the property, Mr. Shaughnesey pointed out that all properties in the neighborhood are serviced by well and septic and contain mature trees and that the existence of these elements on Petitioner's property is hardly sufficient to merit variance relief based on the applicable legal criteria. In addition, Mr. Shaughnesey testified that a self-created hardship does not qualify as proper grounds for variance relief. Testimony was also received from Mary Matra, an adjacent neighbor of Petitioner at 14010 Jarrettsville Pike. Ms. Matra stated that the existing carport was an eyesore and clearly visible from her property and the road. Moreover, Ms. Matra aired a concern regarding commercial activity on the property. Ms. Matra submitted photographs of the subject property which were marked and accepted into evidence as Protestant's Exhibits 4A and 4B. In sum, the Protestants do not believe that Petitioner has met the legal burden for granting the variance and also feel that the carport and its placement in the front/side yard location would have a negative impact on the community and surrounding area.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comments indicate no opposition or other recommendations concerning the requested relief.

The determination of a variance request from the Zoning Regulations is governed by Section 307.1 of the B.C.Z.R., as interpreted by the Court of Special Appeals of Maryland in *Cromwell v. Ward*, 102 Md. App. 691 (1995). As indicated by the Court in *Cromwell*, "The general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances." 102 Md. App. at 700. The two-part variance test involves finding that a property is unique and unusual and that if strict adherence to the regulations were required absent relief, an unreasonable hardship or practical difficulty would

result. Self-inflicted or created hardship is not considered proper grounds for a variance. *Id.* at 707.

After due consideration of the testimony and evidence presented, I find that Petitioner's request for variance should be denied. Although I recognize Petitioners' desire to have a carport for the benefit of his property, insufficient evidence was put forth to satisfy the substantial burden of proof required for a variance. While it is to be applauded that the efforts of Petitioner to renovate the subject property have been extensive and have significantly improved the aesthetics of the primary dwelling and the subject property, the property is not encumbered by special circumstances to render it unique in a zoning sense. While I am also appreciative of Petitioner's concerns regarding the removal of mature, specimen trees and notwithstanding the fact that the preservation of trees can be an appropriate justification for zoning relief depending on the circumstances of a particular property, the fact that most properties in the surrounding community have mature trees as well does not warrant zoning relief in this instance.⁴ Moreover, the fact that the carport is already built does not present a case of unreasonable hardship. As declared by the Court of Special Appeals in *Cromwell*, "hardship, arising as a result of the act of the owner . . . will be regarded as having been self-created, barring relief." 102 Md. App. at 707. Therefore I do not find Petitioner's property to be sufficiently peculiar, unusual and unique to warrant variance relief, nor do I find that unreasonable hardship would result from strict adherence to the B.C.Z.R.

Further, I find that a variance cannot be granted in strict harmony with the spirit and intent of said regulations, and in such a manner as to grant relief without injury to the public health, safety and general welfare. On the contrary, in my judgment, the presence of the carport

⁴ See, *McLean v. Soley*, 270 Md. 208 (1973).

in the front/side yard of the subject property does have a negative impact on the overall rural/residential character and appearance of this section of the Jacksonville community.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the parties, I find that Petitioner's Variance request should be denied.

THEREFORE, IT IS ORDERED this 8th day of July, 2010 by this Deputy Zoning Commissioner, that Petitioner's Variance request from Section III "A" Residence Zone A.13 (1945-1953 B.C.Z.R.) of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit an accessory structure (carport) in the front yard in lieu of the required rear yard be and is hereby **DENIED**.

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

____SIGNED____
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz