

IN RE: <b>PETITION FOR VARIANCE</b>	*	BEFORE THE
S/S Shore Road, 40' W of c/line of		
Maple Road	*	ZONING COMMISSIONER
<b>(8029-A Shore Road)</b>		
15 <sup>th</sup> Election District	*	OF
7 <sup>th</sup> Council District		
	*	BALTIMORE COUNTY
Raymond K. O'Connor, et ux		
Petitioners	*	<b>Case No. 2011-0022-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, Raymond K. O'Connor and his wife, Joyce M. O'Connor. The Petitioners seek variance relief from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure (freestanding carport) to be located in the front yard with a side yard setback of 0.2 feet (2.4 inches) in lieu of the required rear yard and 2.5 feet, respectively. The subject property and relief requested are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the request were Petitioner Raymond O'Connor and David Billingsley of Central Drafting & Design, Inc., the consultant who prepared the site plan and assisted the Petitioners in this matter. Although there were no Protestants or other interested persons present, it is to be noted that the Petition was filed as a result of a violation issued by the Department of Permits and Development Management, Code Inspection and Review Division (Case No. CO-0079042), as to the placement/location of the accessory structure.

Testimony and evidence offered revealed that the subject property is a rectangularly shaped lot located on the south side of Shore Road and west of Maple Road in the Pennwood Terrace subdivision in Sparrows Point. Like many of the lots in this subdivision, the property consists of 5,500 square feet (0.126 acres), more or less, zoned D.R.5.5, and is improved with a one-story dwelling built in 1987. In addition to the dwelling, the property features a covered porch, an existing three (3) vehicle carport (14' wide x 110'-8½" deep) attached to the side of the house (currently used as a patio) and two (2) sheds in the rear yard. A concrete-paved parking pad (approximately 11' wide x 10' deep) leading to the subject freestanding metal carport (11' wide x 18'-2" wide) is located in the front portion of the property (northeast corner of the lot) and accessed from Shore Road.

Petitioners submitted a receipt indicating that the carport in question was purchased and constructed on May 10, 2006. The receipt was marked and accepted into evidence as Petitioners' Exhibit 8. According to Mr. O'Connor, his wife suffers from a pulmonary disease and the carport makes it much easier for Mrs. O'Connor to access the home, particularly in times where there is rain or harsh weather. Until the recent issuance of a code citation, the carport existed in its current location for several years without incident.

As noted, the subject of the variance request relates to the placement/location of a freestanding carport. B.C.Z.R. Section 400.1 pertains to accessory structure locations and states:

“Accessory buildings in residence zones, other than farm buildings (Section 404) shall be located only in the rear yard and shall occupy not more than 40% thereof. On corner lots they shall be located only in the third of the lot farthest removed from any street and shall occupy not more than 50% of such third. In no case shall they be located less than 2 1/2 feet from any side or rear lot lines, except that two private garages may be built with a common party wall straddling a side interior property line if all other requirements are met. The limitations imposed by this section shall not apply to a structure which is attached to the

principal building by a covered passageway or which has one wall or part of one wall in common with it. Such structure shall be considered part of the principal building and shall be subject to the yard requirements for such a building.”

The Zoning Advisory Comments (ZAC) comments were received and are contained within the case file. An adverse comment was received from the Office of Planning, dated August 12, 2010, following an inspection of the property by John R. Alexander, Community Planner, who indicated:

“ ... This existing prefabricated 2 car addition fills the remaining driveway, adds too much additional mass to the site, the materials do not match the house, and is generally incompatible with the site and surrounding community.

The Office of Planning recommends **denial** of the request.”

The Petitioners now come before me indicating that it would create real hardship and practical difficulty if they are required to tear the carport down, especially in light of the fact that it has apparently existed in this location for five (5) years without any complaint. Specifically, Mr. Billingsley presented photographs of several lots in the Pennwood Terrace subdivision that contained similar structures to the carport at issue in this case. *See* Petitioners’ Exhibits 6, 8 and 9. Petitioners also obtained a signed letter from three (3) neighbors indicating that they do not oppose the requested relief. *See* Petitioners’ Exhibit 7. Raymond O’Connor questions why he is being singled out given the immaculate way he and his wife maintain the property. Certainly, the photographs submitted support his contention and show many carport structures erected over time in disregard of the zoning regulations.

Perhaps a decade ago, this evidence of hardship would be all the O’Connor family would have needed to show in order to be granted the variance they request. However, the Court of Special Appeals in the case of *Cromwell v. Ward*, 102 Md. 691 (1995) redefined the test for variance, requiring that before a Petitioner even gets to the question of hardship and practical

difficulty, there must be a finding that the property is unique when compared to other properties in the neighborhood. The legal standard now requires a finding that the property has some special circumstances or conditions existing that are peculiar to the land or the structure which is the subject of the variance request. This finding must be made before any consideration of hardship or difficulty is made and if the property is not found to be unique, no variance can be granted. Equally important, the Court wanted to correct the practice of many jurisdictions finding hardship and difficulty first which would then be used to show the property was unique, reasoning that the unusual situation on the property was different from that found on surrounding properties.

After due consideration of the testimony and evidence presented, I am persuaded to deny the requested relief. While Mr. Billingsley's effort to demonstrate hardship and practical difficulty is admirable, the evidence before me gives no indication that the regulations impact the O'Connor property in any way different from the other lots in the neighborhood. The lot is as plain and rectangular as one could find. The lot is indistinguishable from others in the neighborhood. I find no special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. As noted above and much to the Petitioners' dismay, I may not use the finding that strict compliance with the zoning regulations would result in practical difficulty or unreasonable hardship to indicate uniqueness. Additionally, any construction in a front yard mandates close scrutiny since the impact of building in this area will be greater than the same structure in the rear. Accordingly, I am persuaded to agree with Mr. Alexander from the Office of Planning that granting the requested variances would adversely impact the neighborhood. For all of these reasons, the relief requested must be denied. However, I will give the O'Connor's three (3) months from the date of this Order to remove the

freestanding metal carport.

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 4<sup>th</sup> day of October 2010 that the Petition for Variance seeking relief from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure (freestanding carport) to be located in the front yard with a side yard setback of 0.2 feet (2.4 inches) in lieu of the required rear yard and 2.5 feet, respectively, in accordance with Petitioners' Exhibit 1, be and is hereby DENIED; and

IT IS FURTHER ORDERED that the Petitioners shall have ninety (90) days from the date of this Order to remove the freestanding metal carport from the front yard of the subject property.

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

WJW:dlw

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