

<b>IN RE: PETITION FOR ADMIN. VARIANCE</b>	*	BEFORE THE
NE side of Hiss Avenue; 104 feet SE		
of the c/l of Glen Road	*	OFFICE OF ADMINISTRATIVE
14 <sup>th</sup> Election District		
6 <sup>th</sup> Council District	*	HEARINGS FOR
<b>(3402 Hiss Avenue)</b>		
	*	BALTIMORE COUNTY
Terry L. and Deborah D. Eyet		
<i>Petitioners</i>	*	<b>CASE NO. 2012-0171-A</b>

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**ORDER AND OPINION**

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Administrative Variance filed by the legal owners of the property, Terry L. and Deborah D. Eyet. The Petitioners are requesting Variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an open carport addition with a side yard setback of 2 feet in lieu of the required 7.5 feet. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

This matter was originally filed as an Administrative Variance, with a closing date of February 20, 2012. No one filed a formal written demand for a hearing within the prescribed time period, as required by Baltimore County Code (B.C.C.) Section 32-3-303(b). Even so, on February 24, 2012, Managing Administrative Law Judge Lawrence M. Stahl determined that a hearing was required on this matter as the property is the subject of an active violation case. The hearing was subsequently scheduled for Wednesday, March 28, 2012 at 11:00 AM in Room 205 of the Jefferson Building, 105 West Chesapeake Avenue, Towson. In addition, a sign was posted at the property and an advertisement was published in *The Jeffersonian* newspaper, giving neighbors and interested citizens notice of the hearing.

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, Approvals and Inspections<sup>1</sup>. A verbal stop work order was issued by Inspector Tim Kidd, who informed Petitioners they needed to secure a building permit for the work. They obtained a building permit on December 13, 2011, and the code enforcement case was never pursued after that point, and the Petitioners were never served with a Correction Notice and/or citation. Thus, this case should have been decided without a hearing, because there was not an “active violation case” pending at the time Petitioners’ sought Administrative Variance relief.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. There were no adverse comments received from any of the County reviewing agencies.

Appearing at the public hearing held for this case were Petitioners Terry L. and Deborah D. Eyet. Testimony and evidence revealed that the subject property is located in Parkville, and contains a duplex dwelling, similar to the other homes in the neighborhood. Petitioners bought the home in 1987, and want to construct an open carport over their concrete driveway. (*See* Exhibit 1). Petitioners’ submitted photos showing that several homes in the immediate vicinity have constructed carports similar in size and appearance to the one proposed here.

Based upon the testimony and evidence presented, I will grant the request for variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioners.

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<sup>1</sup> Case No: CO-0104412

Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People's Counsel*, 407 Md 53, 80 (2008).

The Petitioners have met this test.

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is amply demonstrated by the lack of any negative comments from County agencies, and by the enthusiastic support of Petitioners' immediate neighbors.

Pursuant to the advertisement, posting of the property, and public hearing on this petition, and after considering the testimony and evidence offered by Petitioners, I find that Petitioners' variance request (to the extent such relief is necessary) should be granted.

THEREFORE, IT IS ORDERED, this 29<sup>th</sup> day of March, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an open carport addition with a side yard setback of 2 feet in lieu of the required 7.5 feet, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB:dlw