

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(404 Gerries Avenue)		
15 th Election District	*	OF ADMINISTRATIVE
7 th Council District		
Jeffrey K & Darlene M. Soter	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	CASE NO. 2015-0122-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance on behalf of the legal owners of the subject property. The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §400.1: to permit an accessory structure in the front yard in lieu of the required rear yard within 2 ft. of the street right-of-way. The subject property and requested relief is more fully depicted on the site plan that was marked as Petitioners’ Exhibit 3.

Jeffrey and Darlene Soter appeared in support of the requests. There were no interested citizens in attendance at the hearing. The Petition was advertised and posted as required by the B.C.Z.R. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR). Both agencies opposed the request, and believed the front yard location of the accessory structure was not in keeping with the pattern of the neighborhood.

The subject property is approximately 8,250 square feet and is zoned DR 5.5. The property is improved with a single family dwelling, which Petitioners purchased in 2002. Petitioners installed a prefabricated carport (30’ x 12’) on the property in 2006. The carport was installed by a contractor who said that since it was not a permanent structure (i.e., it is attached to

the ground with long spikes) a permit was not required. The carport has no foundation, and is in the front yard of the dwelling.

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).

Petitioners have met this test. The Petitioners must contend with existing site conditions, and the property is therefore unique. If the B.C.Z.R. were strictly interpreted Petitioners would experience a practical difficulty, given they would be required to dismantle the carport. 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 demonstrated by the lack of community opposition. In fact, a petition was signed by approximately 25 adjoining and nearby neighbors, all of whom indicated they had no “problem with me being able to keep the structure erected.” Ex. No. 1.

I have reviewed and considered the ZAC comments, and agree with the sentiments expressed therein concerning the undesirability of the carport's front yard location. It is true the variance standard under Maryland law imposes a weighty burden upon an applicant, and if these requirements were strictly enforced the great majority of such applications would be denied. Even so, the OAH frequently grants variances if it is determined the relief will not negatively impact the community. Here, the best evidence on that point is that the carport has been in its present location for nearly 10 years without complaint. It was only upon the filing of an anonymous complaint that the owners became aware of the need for variance relief.

THEREFORE, IT IS ORDERED, this 4th day of February, 2015, by the Administrative

Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations (“B.C.Z.R.”) §§400.1: to permit an accessory structure in the front yard in lieu of the required rear yard within 2 ft. of the street right-of-way, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
2. The variance relief granted herein shall not “run with the land,” since the carport is not a permanent structure. As such, the carport must be removed when the Petitioners no longer reside at or sell/lease the subject premises.

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

JEB: sln

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County