

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(160 Kingston Park Ln.)		
15 th Election District	*	OF ADMINISTRATIVE
6 th Council District		
Robert S. Frederick	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2016-0253-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 Robert S. Frederick, legal owner of the subject property (“Petitioner”). Petitioner requests Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §§1B02.3.C.1 and 301.1 to permit a carport with a side setback of 5 ft. in lieu of the 7.5 ft. minimum. A site plan was marked as Petitioner’s Exhibit 1.

Robert S. Frederick appeared in support of the Petition. The Petition was advertised and posted as required by the B.C.Z.R. No Protestants or interested citizens attended the hearing. Zoning Advisory Committee (ZAC) comments were submitted by the Department of Environmental Protection and Sustainability (DEPS) and the Department of Planning (DOP).

The subject property is approximately 9,434 square feet and is zoned DR 5.5. The property is improved with a single-family dwelling constructed in 1924. Petitioner proposes to construct a carport but requires variance relief to do so. Petitioner submitted a letter from his neighbor (Exhibit 2) Patricia Belcastro at 162 Kingston Park Lane, which indicates she has no objection to the request.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must

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

Cromwell v. Ward, 102 Md. App. 691 (1995).

Petitioner has met this test. The waterfront lot is narrow and deep and the existing improvements were constructed long before the adoption of the B.C.Z.R. As such the property is unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because he would be unable to construct 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.

The DOP noted in its ZAC comment the property had been the subject of prior code enforcement complaints. Petitioner stated there are no violations on the property, and the file does not contain any information or documents from the code enforcement bureau, which are typically provided in cases where an open violation exists. As such, I believe the Petition can be granted and violations of the County Code and/or zoning regulations (to the extent they exist) should be prosecuted in the normal course.

THEREFORE, IT IS ORDERED, this 7th day of **June, 2016**, 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) §§1B02.3.C.1 and 301.1 to permit a carport with a side setback of 5 ft. in lieu of the 7.5 ft. minimum, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at his 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, Petitioner would be required to return the subject property to its original condition.

2. Prior to issuance of permits Petitioner must comply with the Chesapeake Bay Critical Area (CBCA) regulations.
3. The carport shall remain open on three sides and may not be enclosed.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB/sln