

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(222 Sacred Heart Lane)		
4 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
2 <sup>nd</sup> Council District		
John F. Jimenez	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	<b>CASE NO. 2017-0232-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by the owner of the subject property (“Petitioner”). The Petitioner is requesting variance relief from the Baltimore County Zoning Regulations (B.C.Z.R) to permit an attached carport within 2 ft. of the side property line in lieu of the required 7.5 ft. A site plan was marked as Petitioner’s Exhibit 1.

John Jimenez appeared in support of the petition. Several members of the community attended the hearing and opposed the request. The Petition was advertised and posted as required by the B.C.Z.R. There were no substantive Zoning Advisory Committee (ZAC) comments received from any of the reviewing agencies.

The property is approximately 10,802 square feet in size and is zoned DR 3.5. The property is improved with a two-story single-family dwelling which was constructed in 1969. Petitioner purchased the home last year and proposes to construct a carport to shield his vehicles from the elements.

Protestants submitted a letter from the Chartley Homeowners Association, Inc. (Prot. Ex. 1) indicating they had two major concerns regarding the request. First, they feared the reduced setback would interfere with the use and enjoyment of the neighboring property at 224 Sacred

Heart Lane. They noted these “two properties have an unusual configuration in that their respective driveways are immediately adjacent to one another.” While that may be the case, Petitioner submitted a letter (Pet. Ex. 2) from the owners of the adjoining home (Charles & Mary Janney) who indicated they “do not object to this project.” In addition, if the proposed carport was not connected to Petitioner’s home, the Regulations would permit the structure to be situated 2 ½ ft. from the property line (B.C.Z.R. §400.1), which is essentially the setback requested here.

Protestants also believe the carport will not increase the value of the subject property and “is likely to reduce the value of the property at 224 Sacred Heart Lane.” This is a frequently expressed concern in zoning hearings, although without additional evidence on the point I do not believe the request can be denied on this basis.

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 subject property, unlike nearly all of the homes in close proximity, has a driveway which is separated from the neighbor’s driveway by just a few feet. As such it is unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because he would be unable to construct the proposed 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. Certain restrictions will be included in the order below to help ensure the project does not have a detrimental impact upon the community.

THEREFORE, IT IS ORDERED, this 3rd day of **May, 2017**, by the Administrative Law Judge for Baltimore County that the Petition for Variance to permit an attached carport within 2 ft. of the side property line in lieu of the required 7.5 ft., 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. The carport shall remain open on three sides at all times, and shall not be enclosed.
3. The carport must be designed and constructed of materials which will complement the appearance of the dwelling, as determined in the sole discretion of the Department of Planning (DOP).

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:sln