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| IN RE: PETITION FOR VARIANCE | * | BEFORE THE OFFICE |
| (5 Glider Dr.) | | |
| 15 th Election District | * | OF ADMINISTRATIVE |
| 6 th Council District | | |
| Frederick Schroeder | * | HEARINGS FOR |
| <i>Legal Owner</i> | | |
| | * | BALTIMORE COUNTY |
| Petitioner | | |
| | * | CASE NO. 2019-0118-A |

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Frederick Schroeder, legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief pursuant to the Baltimore County Zoning Regulations (“BCZR”) to allow a proposed and existing accessory structure (2 detached carports) to be located in the side and front yards with a setback as little as 0 ft. in lieu of the minimum required 2.5 ft. A site plan was marked as Petitioner’s Exhibit 1.

Professional engineer Rick Richardson and Frederick Schroeder appeared in support of the petition. Mary Gephardt, Esq. appeared on behalf of Denise Pitsenbarger, an adjoining neighbor who opposed the request. The Petition was advertised and posted as required by the BCZR. No substantive Zoning Advisory Committee (ZAC) comments were received from any of the County reviewing agencies.

The site is approximately 5,000 square feet in size and zoned DR 5.5. The property is improved with a single-family dwelling constructed in 1942. Petitioner has lived in the house since 1955. The property has two carports: one on either side of the dwelling. Most recently the carport on the north side of the dwelling (adjoining the protestant’s lot) was constructed. Petitioner stated the carport on the south side of the dwelling was constructed approximately 30 years ago.

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).

As seen on the plat of Victory Villa (Petitioner's Exhibit 4), the shape and size of Petitioner's property is quite similar to most of the other lots in this community. As such, I do not believe the property is "unique" as that term is used in Maryland law. Thus, the variance request (at least with respect to the newly installed carport on the north side of the dwelling) must be denied. While the same variance standard is arguably applicable in evaluating whether the older carport on the south of the dwelling complies with the BCZR, I believe there are at least two distinguishing factors that dictate a contrary result.

As an initial matter, the plan shows the older carport is setback two (2) ft. from the western boundary and one (1) ft. from the southern boundary. The Regulations require only a 2.5 ft. setback, and this older carport substantially complies with that requirement. In addition, this structure has stood without complaint for over 20 years, and I believe protestant (and Baltimore County) should be equitably estopped from insisting upon its removal at this juncture. In fact, Maryland law provides that an individual may not initiate a complaint or action concerning a building or structure which allegedly violates a setback line requirement more than three years after that structure has been completed. Md. Cts. & Jud. Proc. Code Ann. §5-114. As such, I will grant the petition with respect to the older carport.

THEREFORE, IT IS ORDERED, this 19th day of **December, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance to allow a proposed accessory

structure (detached carport) on the north side of the dwelling to be located in the side and front yards with a setback as little as 0 ft. in lieu of the minimum required 2.5 ft., be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Variance to allow an existing accessory structure (detached carport) on the south side of the dwelling to be located in the side and front yard in lieu of the required rear yard location with setbacks of 1 ft. and 2 ft. in lieu of the required 2.5 feet, 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 its 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.

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