

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(3100 Marnat Road)		
3 rd Election District	*	OFFICE OF ADMINISTRATIVE
2 nd Council District		
Dorina Natiga and Shifra Natiga	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2021-0188-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by Dorina Natiga and Shifra Natiga (“Petitioners”) for property located at 3100 Marnat Rd., Pikesville (the “Property”). The Petitioners are requesting variance relief from Baltimore County Zoning Regulations (“BCZR”), §1B02.3.B (Section III.C.3, 1953 Zoning Regulations) to permit an existing dwelling addition (carport) to remain with a zero (0) ft. setback in lieu of the minimum required 7 ft. setback.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Petitioner, Dorina Natiga appeared, *pro se*, at the hearing in support of the Petition. Behnam Barkhorder, 3102 Marnat Rd. testify in opposition. Avraham Feldman, 3028 Marnat Rd. provided a letter of support.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) which opposed the requested relief. Department of Environmental Protection Sustainability (“DEPS”) did not have a substantive comment. People’s Counsel provided

FACTS AND EVIDENCE

The Property is a 9,180 sf +/- and is improved with a 1-story home built in or around 1955. It is zoned Density Residential (DR 5.5). The My Neighborhood map attached to People’s Counsel’s October 5, 2021 letter reflects mid-century style homes along Marnat Rd. setback evenly

along Marnat Rd with spacious front yards. The homes have very little side yards and as such, sit very close together. Many homes do not have driveways although the testimony was that some homeowners applied for access permits to install driveways as shown on My Neighborhood map. Given the narrow spacing of the homes along Marnat Rd., the homes do not have either garages or carports.

The Property here was not constructed with either a driveway, garage or a carport. Petitioners obtained a building permit (B967308) to construct a 1-story addition attached to the rear of the home. On January 20, 2020, a Residential Access Permit was issued by the Bureau of Highways to the Petitioners for a proposed driveway. (Pet. Ex. 2). On June 9, 2020 and on June 25, 2020, a Baltimore County Building Inspector approved a foundation and concrete slab under Permit B967308. (Pet. Ex. 6). In or about October, 2020, a complaint was filed with Code Enforcement that a carport, front driveway and 2-story addition were being constructed at the Property without a permit. Petitioner acknowledged service of the Code Enforcement Citation on October 22, 2020. (Pet. Ex. 2), see email from Pet. dated 10/22/2020). Street view photographs reveal that construction of the carport is nearly complete. (Pet. Ex. 12).

Between the end of October, 2020 through January of 2021, Petitioner, through email, was in contact with the Code Enforcement Inspector who informed him that Permit B967308 was only issued for the addition and not the carport. (Pet. Ex. 2). Petitioner told the Inspector that he believed he had approval to build the carport based on the Building Inspector's approval of a foundation and a concrete slab. (Pet. Ex. 6). The email chain makes clear that the Petitioner was seeking advice from the Inspector about whether he needed to obtain a new permit, or whether he could have Permit B967308 amended to include the carport. (Pet. Ex. 2). On that issue, the Inspector referred the Petitioner to Building Permit Office. (*Id.*). By email dated December 7,

2020, Petitioner was informed by the Building Permit Office that the application for the Permit B967308 did not state that a carport would be built. The architect plans showed a long hatched area, part of which is where the carport now stands, and part of which is the new driveway, but it was not labeled as a 'carport' and the request to build a carport was also missing from the application. (Pet. Ex. 7). Petitioner had intended to apply for the carport permit on or around December 7, 2020 but had to suddenly leave the country due to his father's cancer diagnosis.

On January 19, 2021, Petitioner's architect revised the plans, correctly labeled the carport, and filed for a permit. (Pet. Ex. 2). In March of 2021, Permit B979036 was attributed to the carport but was not signed because the carport as-built has zero foot setbacks. (Pet. Exs. 3, 4). As a result, Petitioner was required to apply for the instant variance relief before the permit can be authorized. There are two (2) pending Code Violations cases (CB 2100325 and CB2012855) in regard to the improvements constructed without permits and/or without zoning relief. (See File). On April 7, 2021, a Code Enforcement hearing was held and it appears that the case(s) may have been stayed pending the outcome of this case.

Street view photographs of the constructed carport show that it is located on the side of the home next to Mr. Barkhordar's home. In fact, Mr. Barkhordar testified that he, his wife, and 3 children reside in his home located at 3102 Marnat Rd. Mr. Barkhordar opposes the carport as it is too close to his home, and because it is next to a bedroom, which interferes with his family's use and enjoyment of their home. Because the carport is so close to his home, Mr. Barkhordar is also concerned that it is a fire hazard.

The file does reflect that Avraham Feldman, 3028 Marnat Rd., the neighbor who owns the property on the opposite side of Petitioners' home where the carport is located, provided a letter which stated that he did not have any concerns about the carport. (Pet. Ex. 9). While Mr. Feldman

did not testify or appear for the hearing, Hadassah Gholian, identified herself as a future resident of Mr. Feldman's house, and stated that she had no problem with the carport.

DECISION

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).

A threshold condition precedent for variance relief is uniqueness. In this case, there was no evidence presented that the Property is unique, peculiar or different than other properties in the neighborhood in accordance with the standards set forth in BCZR, §307.1 as clarified in *Cromwell, supra*. Indeed, the My Neighborhood maps attached to People's Counsel's letter of October 5, 2021 shows that the Property is a rectangle as are all other lots set forth on the plat. The Property and each property along Marnat Rd., and within the neighborhood, are also similarly sized with nearly identical mid-century modern homes set back at the same distance from the streets on which they front. The lots were not designed with driveways, carports or garages. Vehicles are parked on the street unless a property owner has been granted an access permit for a driveway.

The practical difficulty alleged by the Petitioners (i.e. health issues of a family member) is not the type of practical difficulty required by case law. To prove practical difficulty for an area variance, the Petitioner must produce evidence to allow the following questions to be answered affirmatively:

1. That compliance with the strict letter of the restriction would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such

restrictions unnecessarily burdensome;

2. Whether the grant of the variance applied for would do substantial justice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners; and

3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28, 39 (1974).

As applied here, I find that the requested relief is a self-imposed hardship and was caused by construction of the carport with a zero foot setback, without prior relief being granted, which generated the Code Enforcement cases. Assuming *arguendo* that the Property was somehow determined to be unique, no showing of practical difficulty has been established here.

Montgomery County v. Rotwein, 169 Md. App. 716, 906 A.2d 959 (2006). Without the granting of the zero foot setback, Petitioners can still make reasonable use of the Property as their home. While a carport may be a nice convenience to have, the Property does not become useless as a home because it does not have a carport. Indeed, the Petitioners were granted an access permit for the driveway which does not need variance relief and therefore can remain.

While I recognize that this result may be harsh as it requires the removal of the unauthorized carport, the law is clear that self-inflicted hardship cannot form the basis of a claim of practical difficulty. Speaking for the Court in *Cromwell, supra*, Judge Cathell noted:

Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

Cromwell, at 722.

Additionally, the Variance relief here cannot be granted within the spirit and intent of the BCZR and without harming and negatively impacting the Barkhordars' health, safety, and general welfare and that of the neighborhood. The carport is literally at Barkhordars' bedroom wall. If Petitioners had requested the carport addition on the application for Permit B967308, they would have received the same instruction from the Office of Zoning Review to apply for a variance before a permit can be issued. While I can sympathize with the Petitioners who did not appear to be misleading the County and believed that they had the permit to construct the carport, unfortunately, the impact to the Barkhordars and to the neighborhood is substantial. As mentioned by DOP, the lack of any setback from the property line will cause problems with maintenance. In regard to the spirit and intent of the BCZR, I find that granting a zero foot setback for a carport or garage in this neighborhood of homes situated so compactly upon one another that they are already devoid of side yards, will have an adverse domino effect, and if granted, will generate other requests in this neighborhood for the same types of structures.

THEREFORE, IT IS ORDERED, this **8th** day of **December 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR, §1B02.3.B (Section III.C.3, 1953 Zoning Regulations) to permit an existing dwelling addition (carport) to remain with a zero (0) ft. setback in lieu of the minimum required 7 ft. setback is hereby **DENIED**.

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



MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlm