

| | | |
|---|---|-----------------------------|
| IN RE: PETITION FOR VARIANCE | * | BEFORE THE |
| SW side of Fuselage Avenue; 101 feet NW | | |
| of Glider Drive | * | DEPUTY ZONING |
| 15 th Election District | | |
| 7 th Councilmanic District | * | COMMISSIONER |
| (1114 Fuselage Avenue) | | |
| | * | FOR BALTIMORE COUNTY |
| William F. McGowan | | |
| <i>Petitioner</i> | * | CASE NO. 2010-0345-A |

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owner of the subject property, William F. McGowan. Petitioner is requesting Variance relief from Section 1B02.3.B of the Baltimore County Zoning Regulations (“B.C.Z.R.”) (Section III.A.13 of the 1945 Regulations) to permit 2 existing accessory structures (detached carports) on a corner lot to be located partially in the front and side yards in lieu of the required rear yard only, with a side street line setback of 8.2 feet in lieu of the minimum required 25 feet, and with a rear lot line setback of 2 feet in lieu of the minimum required 10 feet. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the Variance request were Petitioner William McGowan and his brother Robert McGowan. There were no Protestants or interested citizens in attendance at the hearing.

Testimony and evidence offered revealed that the subject property, also known as Lot 64 in the Victory Villa subdivision, is an irregularly shaped corner lot, consisting of approximately 0.12 acre or 5,548 square feet, more or less, zoned D.R.5.5. The property is located at the western intersection of Glider Drive and Fuselage Avenue in the Middle River area of Baltimore County with ingress/egress from Glider Drive. The subject property is improved with an

existing one-story dwelling consisting of 672 square feet and built in 1942 that the Petitioner purchased in 2004, according to the Real Property Data Search marked and accepted into evidence as Petitioner's Exhibit 2. The existing dwelling sits in the middle of the lot with two small sheds located in the rear of the property and the carports in controversy to the south of the principal structure. The improvements can be seen more clearly from Petitioner's site plan.

This case comes before the undersigned as a result of a complaint and citation issued by Baltimore County Code Enforcement in Case No. CO-0077316. Petitioner has two existing carports, both closed on the sides and open at the ends, which are separated by about one foot between them. The carports are located on the macadam driveway that provides ingress/egress for the property off of Glider Drive. Photographs of the carports were marked and accepted into evidence as Petitioner's Exhibits 3A through 3I. Additional testimony and evidence presented by Mr. McGowan revealed that the carports were built in 2007, with only a roof, and have existed since that time without complaint or controversy. Mr. McGowan explained that the carports provide shelter for his two classic cars, which he displays at car shows. Photographs of these two cars were marked and accepted into evidence as Petitioner's Exhibits 4A and 4B. Due to the damaging snow of the past winter, Mr. McGowan revealed that he closed up the sides of the structures, leaving only the ends of the structure open. This action sparked the complaint and citation referenced above. As a result, Petitioner requests Variance relief to legitimize these two structures thereby permitting the carports as they currently exist.

In support of the variance requests, Petitioner testified that because of his property's location on a corner and the location of the house, which was built prior to the enactment of the current zoning regulations, the existing location is the most practical for the carports. Petitioner also stated that these same conditions render his property unique. Mr. McGowan further explained that the pattern of development for the neighborhood includes carports similar to those

existing on the subject property. Mr. McGowan presented photographs of similar structures in the surrounding neighborhood, but admitted that he did not know if relief had been necessary for any of the structures. These photographs were marked and accepted into evidence as Petitioner's Exhibits 7A through 7O. Petitioner also stated that his adjacent neighbors, the persons most affected by the variance request, approved of legitimizing the existing conditions. A letter of support containing the signed approval of the adjacent neighbors was marked and accepted into evidence as Petitioner's Exhibit 6.

Although no Protestants or interested citizens were in attendance at the hearing, the undersigned received an anonymous letter dated, August 10, 2010, expressing concerns regarding the carports in controversy. This letter was marked and accepted into evidence as Protestant's Exhibit 1 and does not oppose the carports or their location, but requests that the siding that was placed on the carports be removed because it blocks the view from the home next door, thereby hindering ingress/egress from the adjacent driveway.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments received from the Office of Planning dated July 7, 2010 indicate that the dwelling is set diagonally and toward the rear corner of the lot. Moreover, these comments note that there are several sheds on the property besides the 'carports,' which have walls, do not relate in design to the house, and are distributed irregularly on the driveway in such a way as to give a crowded and messy appearance. Thus, the Planning Office does not support permitting these additions to the property. No other adverse comments were received from any of the Baltimore County agencies.

The determination of a variance request from the Zoning Regulations is governed by Section 307.1 of the B.C.Z.R., as interpreted by the Court of Special Appeals of Maryland in *Cromwell v. Ward*, 102 Md. App. 691 (1995). The two-part variance test involves a

determination of whether a property is unique and unusual and that if strict adherence to the regulations were required absent relief, an unreasonable hardship or practical difficulty would result. *Id.* at 707.

Based upon the testimony and evidence presented, I am persuaded to grant the request for variance relief. There is adequate evidence that the subject property is peculiar, unusual and unique in accordance with Section 307.1 of the B.C.Z.R. Factors such as the subject property's location on a corner and at an intersection as well as the dated recordation of the record plat for the property, serve as special circumstances or conditions that combine to render the property unique in a zoning sense. Further, I find that strict compliance with the Zoning Regulations would create a hardship that would result in a denial of a reasonable and sufficient use of the property. *See, Belvoir Farms v. North* 355 Md. 259 (1999). Moreover, I find that the pattern of development in the surrounding neighborhood renders approval of the variance request appropriate without causing detriment to the surrounding community. However, in order to mitigate any adverse consequences such relief may cause, Petitioner shall be required to remove the siding of the carports within the next sixty (60) days and keep the structures as open projections. Any type of temporary or permanent walls or enclosure is hereby prohibited from existing on the carports. Accordingly, I also find this variance request can be granted in strict harmony with the spirit and intent of the Zoning Regulations, and in such a manner as to grant relief without injury to the public health, safety and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered, I find that Petitioner's variance requests should be granted.

THEREFORE, IT IS ORDERED this 27th day of August, 2010 by this Deputy Zoning Commissioner that Petitioner's Variance requests from Section 1B02.3.B of the Baltimore

County Zoning Regulations (“B.C.Z.R.”) (Section III.A.13 of the 1945 Regulations) to permit 2 existing accessory structures (2 detached carports) on a corner lot to be located partially in the front and side yards in lieu of the required rear yard only, with a side street line setback of 8.2 feet in lieu of the minimum required 25 feet, and with a rear lot line setback of 2 feet in lieu of the minimum required 10 feet be and are hereby **GRANTED**, subject to the following which are conditions precedent to the granting of the relief:

1. Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioner is ordered to remove the existing walls and siding on the carports within sixty (60) days of the date of this Order.
3. Petitioner is prohibited from implementation of any temporary or permanent walls or enclosure whatsoever on the carports now and in the future.
4. The relief granted herein shall be “*in gross*” and personal to Petitioner rather than running with the land. Upon Petitioner’s sale, transfer, rental, abandonment, or other conversion of the property to another, said carports shall be removed from the property within sixty (60) days of such sale, transfer, rental, abandonment, or other conversion of the property at Petitioner’s sole cost and expense.

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

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz