

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
SW Corner Bayside and Todd Avenues		
(9301 Todd Avenue)	*	ZONING COMMISSIONER
15 th Election District		
7 th Council District	*	OF
Billy R. Horne, et ux	*	BALTIMORE COUNTY
Petitioners		
	*	Case No. 2011-0014-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owners of the subject property, Billy R. Horne and his wife, Thelma S. Horne. The Petitioners seek variance relief from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing accessory structure (garage) to be located in the side rear yard not farthest removed from any street right-of-way. The subject property and relief requested are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the request was Billy Horne, property owner. Although there were no Protestants or other interested persons present, it is to be noted that the Petition was filed as the result of a violation issued by the Department of Permits and Development Management, Code Inspection and Review Division (Case No. CO0078816), as to the placement/location of the accessory structure (enclosed carport).

Testimony and evidence offered revealed that the subject property is a rectangularly (50' x 113') shaped corner lot¹, located at the corner of Todd Avenue and Bayside Avenue in the Fort Howard/Sparrows Point area. The property consists of 5,651 square feet, more or less,

¹ The subject property is a *corner lot* defined in Section 101 of the B.C.Z.R. as: "a lot abutting on and at the intersection of two or more streets".

zoned D.R.5.5, and is improved with a one-story dwelling built in 1974. In addition to the dwelling, the property features a patio and two (2) sheds (10' x 10' & 8' x 8') in the rear yard farthest from the roads. Off-street parking is provided by way of a concrete-paved parking pad on the back portion of the lot accessed from Bayside Avenue. The Petitioners purchased and have resided at the property since 1987.

The subject of the variance request relates to the placement/location of an enclosed carport. Mr. Horne testified that at the time they purchased the property, a 16' x 20' poured concrete parking pad existed in the southeast corner of the lot. The Petitioners added an open carport over the parking pad in 1992 to provide protection for Thelma Horne's newly purchased Dodge LeBaron convertible. The carport existed at this location for 18 years without complaint. Under Section 400.1 of the B.C.Z.R., the carport must be located in the third of the yard farthest removed from any side street. Mr. Horne indicated that the carport could not be located in that corner of the lot, due to the patio, existing sheds and the need to construct an additional 30 feet of impervious concrete driveway to reach the carport. Mr. Horne testified that there is no room beside his home (west side) for a driveway and that his property is located in the Chesapeake Bay Critical Area (CBCA) – Limited Development Area (LDA) that prohibits the 30' x 10' driveway. It is for the above reasons as well as being the most practical from the Petitioners standpoint that the parking pad and carport were placed in the yard next to Bayside Avenue. As stated earlier, this is a violation case evidently generated by someone in the neighborhood that raised concerns when the Petitioners enclosed the carport on three (3) sides leaving the front open for access. Mr. Horne stated that neighbors who are visually affected by the carport's location have no complaints.

There were no adverse Zoning Advisory Committee (ZAC) comments submitted by any County reviewing agency. The Office of Planning's comment, dated August 12, 2010, supports Mr. Horne's testimony that he keeps his property in good order and repair. In this regard, John R. Alexander, Community Planner with the Office of Planning, following a personal inspection of the site, stated as follows:

"The Office of Planning has reviewed the petitioner's request and accompanying site plan and offers the following:

- The single car garage is already constructed of the same exterior materials as the house.
- This house is on a small corner lot. It is well maintained.
- There is a patio and 2 small sheds in the rear furthest from the roads.

As such the Office of Planning has no objection to the petitioner's request."

After due consideration of the testimony and evidence presented, I am persuaded to grant the requested relief. I find that the location of the enclosed carport is appropriate in this instance and that strict compliance with the regulations would result in a practical difficulty and deny the Petitioners reasonable use of their property. There were no adverse comments submitted by the County's reviewing agencies, the record of the case reflects that notice of the public hearing was duly posted on the property as required, and no one appeared in opposition to the request. In fact, those families that are visually affected by the garage's location do not oppose the request. Thus, it appears that relief can be granted without detrimental impact to adjacent properties or surrounding locale.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons set forth herein, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 13th day of September 2010 that the Petition for Variance seeking relief from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing accessory structure (garage) to be located in the side rear yard in lieu of the rear yard in the third of the lot farthest removed from any street, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners may apply for their permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) The variance relief granted to Petitioners herein is personal in nature, limited in duration, and shall not run with the land as to inure to the benefit of any subsequent property lessor or owner. To assure the current and future use of the subject property will not impact adversely upon nearby residential areas or become a Zoning Enforcement problem, the garage shall cease to exist upon the first of the following event(s):
 - The property is sold to an unrelated third party of the Home's immediate family; and/or
 - After the passage of fifteen (15) years of the date hereof.
- 3) When applying for a permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

Any appeal of this decision shall be entered within thirty (30) days of the date hereof.

WJW:dlw

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County