

IN RE: <b>PETITION FOR VARIANCE</b>	*	BEFORE THE
SW/S Linwood Avenue, 822.4' SE		
C/line of Harford Road	*	ZONING COMMISSIONER
<b>(3029 Linwood Avenue)</b>		
14 <sup>th</sup> Election District	*	OF
6 <sup>th</sup> Council District		
	*	ZONING COMMISSIONER
Pamela Ann Felix		
Petitioner	*	<b>Case No. 2011-0119-A</b>

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the legal owner of the subject property, Pamela Ann Felix. The Petitioner requests a variance pursuant to Section 301.1.A of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow an existing attached carport in the side yard with the setback of 1 foot in lieu of the required 7.5 feet. The subject property and requested relief are more particularly described on the site plan submitted which were accepted into evidence and marked as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the request was Pamela Felix, property owner. There were no Protestants nor were there any interested persons present; however, it is to be noted that this matter is the subject of an active violation (Code Enforcement Citation No. CO-83452) and a copy of the Code Enforcement Correction Notice was made a part of the zoning hearing file. A resolution of the violation case is pending the outcome of this variance request.

Testimony and evidence offered disclosed that the subject property is a rectangular shaped parcel located on the southwest side of Linwood Avenue between Harford Road and Wilson Avenue in Parkville. The property, recognized as Lots 130 and 131 in the subdivision

known as Linwood, is 50' wide x 150' deep containing an area of 0.1722 acres or 7,500 square feet zoned D.R.5.5. The property is improved with a 1-½ story, single-family dwelling built in 1928 and a detached garage in the rear yard approximately 14' wide x 33' long. At issue in this case is an attached carport, 14' wide x 17' deep, constructed by the Petitioner on the south side of her home.<sup>1</sup> Ms. Felix has resided at 3029 Linwood Avenue for over 32 years and the open projection carport was added recently by her son to allow the enhanced use of entering the home from the side and rear doors instead of climbing the 13 or so steps that lead from Linwood Avenue to the front door. The carport shields the Petitioner from rain and snow. Ms. Felix testified as to the practical difficulty and unreasonable hardship she has endured using the front entrance given her complicated medical history. She suffers health problems and physical limitations caused by lumbar and cervical disc disease and surgeries she has undergone at G.B.M.C. since 1995. She states that the detached garage has historically been used for storage and no longer functions for parking a car inside.

Ms. Felix testified that she placed the carport in its present location for the reasons indicated above and was not aware of any County restriction that would prevent her from doing so. To a certain extent, I am sympathetic to Ms. Felix's plight. A search of the Zoning Commissioner's records reveals several variances applied for and granted for similar relief<sup>2</sup> but many of the carports depicted in the photographs, Petitioner's Exhibit 4, have been erected over time and have been done so in disregard of zoning regulations. Ms. Felix testified that all her

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<sup>1</sup> A carport such as this and others in the neighborhood shown on the photographic exhibits submitted as Petitioner's Exhibit 4 is a reasonable accessory use to a residence. *See Belvoir Farms v. North* 355 Md. 259 (1999) and *White v. North*, 356 Md. 31 (1999).

<sup>2</sup> In April 1995, a nearby residence at 3217 Woodside Avenue received a variance to allow a side yard setback of zero (0) feet in lieu of the required six (6) feet for a proposed carport in Case No. 95-326-A. Likewise, in Case No. 01-536-A involving 7713 Wilson Avenue, the property owner obtained a variance to construct an addition with a side yard setback of three (3) feet in lieu of the required ten (10) feet.

neighbors, even the most affected and who can actually see the structure from their properties (including Gregory Kump who initially contacted Code Enforcement), have no objection and have signed letters of support. *See* Petitioner's Exhibit 7. There were no adverse Zoning Advisory Committee (ZAC) comments submitted by any County reviewing agency. Thus, it appears that relief can be granted without detrimental impact to adjacent properties of the surrounding locale. After due consideration of the testimony and evidence presented, I am persuaded to grant the variance. I find that strict compliance with the regulations would be unduly burdensome and that the Petitioner would suffer a practical difficulty and unreasonable hardship. However, as a condition of approval, I will require removal of the carport at such time as the property is sold or Ms. Felix no longer resides on the property.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 26<sup>th</sup> day of November 2010 that the Petition for Variance seeking relief from Section 301.1.A of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow an existing attached carport in the side yard with the setback of 1 foot in lieu of the required 7.5 feet, in accordance with Petitioner's Exhibit 1, be and the same is hereby granted; subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

1. The Petitioner may apply for her building permit and be granted same upon receipt of this Order; however, the Petitioner is hereby made aware that proceeding at this time is at her own risk until the thirty (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 carport shall remain open on the three (3) exposed sides and shall not be enclosed at any time.

3. The temporary variance relief granted to the Petitioner herein is personal in nature, limited in duration, and shall not run with the land so as to inure to the benefit of any subsequent property lessee or owner. To assure the current and future use of the subject property, the Petitioner will, within sixty (60) days of the date hereof, record in the Land Records of Baltimore County a Covenant to the Deed for her property (in the form attached) restricting the use of the property.
4. The carport shall be removed upon Ms. Felix's death, if she should reside elsewhere, or if the property is sold.
5. A copy of the recorded Covenant shall be submitted to the Department of Permits and Development Management (DPDM) for inclusion in the case file.
6. The decision in this case is not a legal precedent that may be cited as such in any other zoning case.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code (B.C.C.).

WJW:dlw

\_\_\_\_SIGNED\_\_\_\_\_  
WILLIAM J. WISEMAN, III  
Zoning Commissioner for  
Baltimore County

