

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
E Side of Delmar Avenue, 154' S of		
c/line of Wise Avenue	*	OFFICE OF ADMINISTRATIVE
12 <sup>th</sup> Election District		
7 <sup>th</sup> Council District	*	HEARINGS FOR
<b>(105 Delmar Avenue)</b>		
	*	BALTIMORE COUNTY
Bryon L. and Barbara L. Blubaugh		
<i>Petitioners</i>	*	<b>CASE NO. 2011-0310-A</b>

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**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed by the legal owners of the property, Bryan and Barbara Blubaugh. The Petitioners are requesting Variance relief under Sections 303.1 and 301.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to: (1) allow an existing accessory structure (detached carport - functionally attached to the dwelling) in the front yard with a front average setback of 12 feet (to centerline of street), and side yard setback of 6 inches in lieu of the minimum required 46 feet and 2 ½ feet respectively, and (2) allow a proposed attached carport with a side yard setback of 2 inches in lieu of the minimum required 7 ½ feet. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the variance request were Petitioners Bryon and Barbara Blubaugh. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R. There were no Protestants or other interested persons in attendance.

This matter came to the Office of Administrative Hearings as a result of a complaint registered with the Code Enforcement Division of the Department of Permits, Approvals and

Inspections<sup>1</sup>. A Code Inspections and Enforcement Correction Notice was issued to Petitioners on March 22, 2011, for not obtaining permits for the addition to the rear and side of the dwelling and failure to obtain the required inspections. Hence, Petitioners filed the instant request for a variance to rectify the defects noted in the Correction Notice.

Testimony and evidence offered revealed that the subject property comprises a small lot in a residential subdivision, the rear of which abuts Chink Creek. Petitioners submitted an aerial Chesapeake Bay Critical Area map depicting the location of his lot relative to Chink Creek. (Exhibit 3) Petitioners also submitted photographs which show the existing carport installed at the front of the home (constructed of metal) as well as the initial construction of the proposed side yard carport, constructed of wood. (Exhibit 2)

Petitioner explained that he frequently experiences flooding into his basement, which has caused mold to form in that area. The Petitioner testified that the water was getting into the basement near the foundation of his home, and the proposed side yard carport will remedy that situation, and the rain water will be carried via gutter and downspout to the side yard.

The final exhibit is an affidavit signed by the owners of six adjoining homes, indicating that these neighbors “have no objections to the carports located over the driveway.”

The Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. Comments were received from the Bureau of Development Plans Review (DPR) dated May 11, 2011, as follows:

1. The base flood elevation for this site is 7.7 feet [NAVD 88].
2. The flood protection elevation is 8.7 feet.
3. In conformance with *Federal Flood Insurance* requirements, the first floor or basement floor must be at least 1 foot above the flood plain elevation in all construction.
4. The property to be developed is located adjacent to tidewater. The developer is

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<sup>1</sup> Case No: CO-0090553

advised that the proper sections of the *Baltimore County Building Code* must be followed whereby elevation limitations are placed on the lowest floor (*including basements*) of residential (*commercial*) development.

5. The building engineer shall require a permit for this project.
6. The building shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of structure with materials resistant to flood damage.
7. Flood-resistant construction shall be in accordance with the Baltimore County Code which adopts, with exceptions, the *International Building Code*.

In addition, comments were received from the Department of Environmental Protection and Sustainability (they were received in the Office of Administrative Hearings after the hearing was held in this case) and for ease of reference a copy of same is appended to this Order.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. The Petitioners' lot is small and is further constricted by the Chesapeake Bay Critical Area buffer requirements, which essentially prohibit construction in the rear of the home.

I further find that the granting of the relief as set forth herein can be accomplished without injury to the public health, safety, and general welfare. Therefore, in all manner and form, I find that the variance requested can be granted in accordance with the requirements of Section 307 of the B.C.Z.R., as articulated in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and after considering the testimony and evidence offered by Petitioners, I find that Petitioners' variance request should be granted.

THEREFORE, IT IS ORDERED, this 9th day of June, 2011 by this Administrative Law Judge that Petitioners' Variance request from Sections 303.1 and 301.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to: (1) allow an existing accessory structure (detached carport - functionally attached to the dwelling) in the front yard with a front average setback of

12 feet (to centerline of street), and side yard setback of 6 inches in lieu of the minimum required 46 feet and 2 ½ feet respectively, and (2) allow a proposed attached carport with a side yard setback of 2 inches in lieu of the minimum required 7 ½ feet, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. The Petitioners may apply for their building permit and may be granted same upon receipt of this Order, however the Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason, this Order is reversed, the Petitioners will be required to return and be responsible for returning said property to its original condition.
2. Prior to obtaining permits for the construction, Petitioners must satisfy the requirements of the Bureau of Development Plans Review and the Department of Environmental Protection and Sustainability, as set forth in their comments which are incorporated herein.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:pz

Attachments