

IN RE: PETITION FOR VARIANCE
N/side of Kahn Drive, 266' E of
c/line of Woodside Road
3rd Election District
2nd Council District
(604 Kahn Drive)

Silvia Pinto
Petitioner

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BEFORE THE
OFFICE OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2012-0226-A

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of a Petition for Variance filed by Silvia Pinto. The Petitioner is requesting Variance relief from Sections 303.1, 1B02.3 (1957), and 1B02.3.A of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a side setback of 3' for an existing (attached) carport in lieu of the required 6'. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the public hearing in support of the variance request was Petitioner Silvia Pinto. There were no Protestants or other interested parties in attendance. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R., and the file does not contain any letters of opposition or protest.

This matter is currently the subject of a violation case (Case No. CO-0107087) before the Office of Administrative Hearings, and a copy of the Code Enforcement file was made a part of the zoning hearing file. It should be noted that the fact that a code violation is issued is generally not considered in a zoning case. Zoning enforcement is conducted by the Department of Permits, Approvals, and Inspections, which has the authority to issue Correction Notices and Citations and to impose fines and other penalties for violation of law. On the other hand, the role of the Administrative Law Judge in this matter is to decide the discreet legal issue of whether the

Petitioner is entitled to the requested zoning relief.

Testimony and evidence revealed that the subject property is 7,280 square feet and zoned DR 5.5 (vested R6). The property is located in Pikesville and is improved with a single family dwelling. The Petitioner's husband constructed the carport in early March, 2012, so that the family would have space to store a jet-ski and other valuables, as well as have an outdoor seating area sheltered from the elements. The Petitioner testified that she and her husband were unaware that a permit was required to construct the carport. She also indicated she was unaware of the 6' setback requirement, and believed it was permissible to construct the carport anywhere within the stockade wood fence (See Exhibit 2) separating her home from her neighbor at 602 Kahn Drive. Finally, Petitioner testified that she has a good relationship with both adjoining neighbors, and that they both supported her variance request.

Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. There were no adverse comments received from any of the County reviewing agencies.

Based upon the testimony and evidence presented, I am persuaded to grant the request for 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. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioner.

Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md 53, 80 (2008).

Petitioner has met this test.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty and/or hardship. Indeed, Petitioner would be required to tear down a portion of the carport, which would be expensive and time-consuming.

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is amply demonstrated by the lack of community opposition, as well as the absence of comments by County reviewing agencies.

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

THEREFORE, IT IS ORDERED, this 27 day of April, 2012, by this Administrative Law Judge that Petitioner's Variance request from Sections 303.1, 1B02.3 (1957), and 1B02.3.A of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a side setback of 3' for an existing (attached) carport in lieu of the required 6', be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. The Petitioner may apply for a building permit and may be granted same upon receipt of this Order. However the Petitioner is hereby made aware that proceeding at this time is at his 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 Petitioner will be required to return and be responsible for returning said property to its original condition.

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

JEB:pz

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County