

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
www.montgomerycountymd.gov/content/council/boa/index.asp

(240) 777-6600

Case No. A-6470

PETITION OF EDWARD Q. GODDARD

OPINION OF THE BOARD

(Public Hearing Date: July 15, 2015)
(Effective Date of Opinion: August 14, 2015)

Case No. A-6470 is an application by Edward Q. Goddard for a four-foot variance from the seven-foot side yard setback required by Section 176-3(c)(3) of the 1950 Montgomery County Zoning Ordinance, to allow an existing carport.

The Board of Appeals held a public hearing on the application on July 15, 2015. Michele Rosenfeld, Esquire, appeared on behalf of Mr. Goddard. Mr. Goddard appeared and testified. There were no other parties. The record contains one letter of opposition and one letter of support for the variance.

Decision of the Board: Requested Variance Granted.

EVIDENCE PRESENTED

1. The subject property is Lot 1, Hoffmans Subdivision located at 6517 79th Street, Cabin John, Maryland, 20818, in the R-90 Zone.
2. The record contains an excerpt from the Montgomery County Code, 1950 [Exhibit No. 7], which states, at Section 176-3(3), "There shall be a side yard not less than seven feet in width along each side lot line;" and at Section 176-3(7), "No accessory building may be built closer than two feet from any lot line." At the Board's request, Ms. Rosenfeld read into the record the definitions from the 1950 Code of 'garage' and 'accessory building', as follows:

"Section 176-1(b)(16) Garage, private. An accessory building used only for storage of not more than three motor driven vehicles, only one of which may be a commercial vehicle."

"Section 176-1(b)(1) Accessory building. A subordinate building except structures used exclusively for farm operation, located entirely in and occupying not more than 35 percent of a rear yard, and whose use is wholly incidental to that of the main building on the same lot, and which does not exceed 15 feet in height above the ground level on any lot upon which is located a dwelling. Any building which is incidental to the conducting of any agricultural use on the lot shall be deemed to be an accessory building. A trailer shall not be considered an accessory building."

3. The subject property was recorded in 1947 and has remained unchanged in size and shape since recordation [See Exhibit Nos. 3, 9a]. Section 7.7.1.D.2(c) of the Zoning Ordinance provides that a detached house on a platted lot that has not changed in size or shape since 1958 may be "constructed or reconstructed in a manner that satisfies the ... side yard and rear setback required by its pre-1958 zoning in effect when the lot... was first created." The subject property was zoned 'A' Residence Zone which imposed a seven-foot side yard setback. [See 1950 Zoning Code Section 176-3(c)(3), Exhibit 7 at page 1054].

4. The Applicant purchased the subject property in 2003, with an existing carport. He did not know that the carport encroached into the setback. Subsequently he began repairs on the carport and then discovered that it had deteriorated to such an extent that he decided to replace it entirely, on the existing footprint, adding a wall between the carport and the shopping center to the south. He testified that he added the wall to buffer the noise of the trash receptacle on the shopping center property, which he can hear from 5 a.m. to 8 p.m., as well as for protection from thefts, which occurred from his prior carport. The carport is still open on the front (west) and back (east) sides. Mr. Goddard received a notice of violation for alterations without a permit and was denied an after-the-fact building permit because the carport extends four feet into the setback from the south property line. [Exhibit No. 3]. Mr. Goddard testified that if he made the carport any narrower he would not be able to open his car doors, and that he cannot widen it to the north, because the northern wall of the carport is the southern, exterior wall of his house. [Transcript, July 15, 2015, p. 21].

5. Mr. Goddard testified that his property substantially conforms with an established development pattern of Hoffman's Subdivision and the nearby neighborhood, consisting of homes on relatively small lots with carports and garages either on or very close to the property lines. Referring to Exhibit Nos. 10(A-J), Mr. Goddard testified that

- The carport depicted in Exhibit 10(a) is similar to his, but is not located within the setback;
- The detached garage depicted in Exhibit No. 10(c) appears to be within three feet of the abutting property line;
- The carport depicted in Exhibit No. 10(d) is a detached structure within three feet of the side lot line;

- The garage depicted in Exhibit 10(f) is attached to the main house by a corner, and is closer than three feet to the shared property line;
- The property depicted in Exhibit Nos. 10(g) and (h) has frontage on Carver Road and access to the rear, where its garage is located, from 79th Street; The garage appears to be detached and is closer than three feet to the side lot line;
- The driveway depicted in Exhibit No. 10(i) appears to be a shared driveway, on the property line, leading to a detached garage, with two parking bays.
- The detached garage depicted in Exhibit 10(j) appears to be closer than three feet to the property line.

In her closing statement, Ms. Rosenfeld summarized this development in the neighborhood as an "eclectic" pattern that includes structures intended to house vehicles, often located less than seven feet from the property line. [Transcript, p. 43].

6. Mr. Goddard testified that the abutting property to the south is the MacArthur Plaza shopping center and that his reconstructed carport does not have more of an impact on that property than his prior carport had.

7. The record contains an excerpt from the April 1990 Bethesda-Chevy Chase Master Plan. The Master Plan contains recommendations to enhance community use of the MacArthur Plaza Shopping center abutting Mr. Goddard's property. The Master Plan does not mention the subject property.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59.7.3.2.E.2 each of the following apply:*

Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:

Section 59.7.3.2.E.2.a.v the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

The Board finds that the existing carport conforms with an established pattern of development in the neighborhood that includes structures intended to house vehicles, often located less than seven feet from the property line. The Board finds that in referring to "a subordinate building," the definition of Accessory structure in Section 176-1(b)(1) of the 1950 Code means a separate, detached structure. The evidence, specifically Exhibit Nos. 10(c), 10(d), 10 (g&h), and 10(j), shows a pattern of construction of detached

garages that appear to comply with the two-foot setback required by Section 176-3(7) of the 1950 Code.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

Mr. Goddard is not responsible for the pattern of development in the neighborhood. Furthermore, he purchased the subject property with a carport in the current location.

3. *Section 59.7.3.2.E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

“Practical difficulty” has been generally interpreted by the courts as a situation in which strict compliance with the Zoning Ordinance would unreasonably prevent the use of the property in question for a permitted purpose or render conformance unnecessarily burdensome. See *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md.App. 28, 39, 322 A.2d 220, 226 (1974).¹ The courts have further indicated that a “practical difficulty” must result from a disproportionate impact of the Zoning Ordinance on the property that is caused by a “unique” element of the property. See *Cromwell v. Ward*, 102 Md.App. 691, 695, 651 A.2d 424, 426 (1995). While one can envision how an unusually small or narrow shape, or steep terrain, could render a property “unique” such that application of the setback restrictions in the Zoning Ordinance to that property would unreasonably prevent the use of the property for a permitted purpose, it is more difficult to conceive of how the failure of a property to conform with the development pattern on other properties could cause the setback restrictions of the Zoning Ordinance to unreasonably prevent the use of that property for a permitted purpose. Nevertheless, the latter constitutes “uniqueness” under Section 59.7.3.2.E.2.a.v of the Zoning Ordinance, and a petitioner for a variance that seeks to qualify under the “established historic or traditional development pattern” element must meet that criteria and the practical difficulty criteria before the variance can be granted.

In light of the apparent mismatch between these elements, the Board concludes that the District Council, in adding the “established historic or traditional development pattern” standard to the list of “unique” elements in the Zoning Ordinance that can justify the grant of a variance, must have intended to give the Board the flexibility to grant variances that are necessary to allow proposed construction to follow a lawfully established development pattern on a street or in a neighborhood where the strict application of the Zoning Ordinance would otherwise prevent such a result. To conclude otherwise would essentially nullify the new factor as an eligible finding to support a variance, and we are required, if we can, to give effect to all elements of a legislative

¹ The test for practical difficulty also includes an assessment of whether the grant of the variance would do substantial justice to the applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief, and of whether the relief can be granted in such a fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

enactment.² In the instant case, the evidence of record indicates an established pattern of development that includes structures intended to house vehicles that are located less than seven feet from the property line, and that the strict application of the Zoning Ordinance would not allow for such a location on the subject Property, despite that being the historic location of this carport, which is being replaced on its existing footprint. The Board thus finds that this constitutes a practical difficulty, and that the requested variance is the minimum needed to overcome this difficulty, since per the testimony of the Petitioner, anything less will not allow him to open his car doors.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Bethesda Chevy Chase Master Plan makes no mention of this property or this neighborhood, except for the abutting shopping center. The Board finds that the carport in question is consistent with development in the neighborhood and with the residential uses in the neighborhood, and in no way impairs the intent or integrity of the master plan.

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties;*

The Board finds that there is no evidence that the carport will be adverse to the use or enjoyment of abutting or confronting property owners. The subject property abuts the MacArthur Plaza shopping center parking lot, which clearly will not be adversely affected by the carport. Furthermore, the carport is similar in configuration and location to many other carports and garages in the neighborhood.

Accordingly, the requested variance to allow an existing carport within four feet of the side lot line is **granted**, subject to the following conditions:

1. Petitioner shall be bound by his testimony, and exhibits of record, to the extent that such testimony and evidence are mentioned in this opinion; and
2. Construction shall be according to Exhibit Nos. 4 and 5.

Therefore, based upon the foregoing, on a motion by Stanley B. Boyd, seconded by John H. Pentecost, with Edwin S. Rosado, Carolyn J. Shawaker, Vice-Chair, and David K. Perdue, Chair, in agreement, the Board adopted the following Resolution:

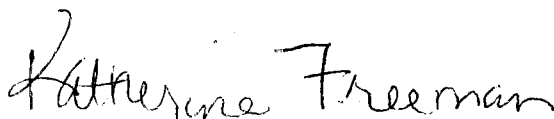
BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

² Per *Rossville Vending Machine Corporation v. Comptroller*, 97 Md. App. 305, 315, 629 A.2d 1283, 1288, cert. denied, 333 Md. 201, 634 A.2d 62 (1993), "no part of a statute may be rendered surplusage, superfluous, meaningless, or nugatory."



David K. Perdue
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 14th day of August, 2015.



Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.