

IN RE: Petition for Zoning Variance * BEFORE THE
N/S Garnet Road 98' East of * ZONING COMMISSIONER
Old Harford Road (2700 *
Garnet Road *
9th Election District * OF BALTIMORE COUNTY
6th Councilmanic District *
John F. Flaherty, Jr., et ux * CASE 88-89-A
Petitioners *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests variances to permit a sideyard setback of 6 inches in lieu of the required 7-1/2 ft. for an open projection carport on the west side of his house, as described on Petitioner's Exhibit 1.

The Petitioner appeared and testified. The evidence was proffered. The Protestant was Mr. Donald Stahle, who is the neighbor next door at 8203 Old Harford Road.

Testimony indicated that the subject property is zoned D.R. 5.5, and is located on Garnet Road in the Carney section of Baltimore County. The property is improved with a 1-1/2 story dwelling unit with a presently existing concrete parking area located on the west side of the dwelling unit. The existing parking area was in the past covered with an awning. As a result of the harsh winter storms during 1987, the awning was rendered damaged and was removed by the Petitioner and replaced with a larger awning to create a carport 15-1 2 feet, by 20 feet. The resulting larger carport is the subject of the requested zoning variance.

The presently existing carport/awning was constructed during the Spring and Summer of 1987. A zoning complaint was filed with the Office of Zoning Enforcement after the construction of the awning. The Petitioner was cited for a violation by the Zoning Enforcement Office in Case #C-87-1743. The violation case is being held pending the outcome of this Petition for Zoning Variance.

The Protestant testified that he was opposed to the awning, because of its nearness to his property and his home. Testimony indicated that the property is basically level with a slight grade from the Petitioner's home towards the Protestant's home. That all snow and rain runoff from the awning would be channeled towards the Protestant's home causing a water and flooding problem. The Protestant presented pictures, Protestant's Exhibit No. 2 which indicate that the subject awning does not contain any rain gutters or rain spouts. This lack of rain gutters presents a run off problem.

At the conclusion of the hearing on September 1, 1987, the parties agreed to review the situation and indicate to the Zoning Commissioner whether or not a compromise could be reached. The compromise would allow the Petitioner to maintain a covered carport but also address the concerns of the Protestant. As a result of that agreement, several letters were directed to the Zoning Commissioner which tend to indicate that a compromise position may have been reached. The compromise appears to be that the awning will be moved to a position 3 feet off of the property line as opposed to the requested and present 6 inches. The awning will be constructed with the proper rain spouting and rain guttering to direct all runoff into the street and to prevent runoff onto the Protestant's property.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. *McClain v. Soley* 270 Md. 208 1973. After reviewing all of the testimony and evidence presented, it appears that an amended form of variance should be granted with certain restrictions. The testimony seems to indicate that there is a practical difficulty created by the Zoning Regulations which has worked a hardship against the Petitioner and his property. Although the

testimony is conflicting, it is the responsibility of the Zoning Commissioner to determine the issues before him based upon the testimony in the record. I, therefore, find a hardship.

It is also necessary to determine whether or not the requested variance would be detrimental to the public health, safety and/or the general welfare. It is the opinion of the Zoning Commissioner that if the Petition for Zoning Variance was granted that there is a potential for creating a water runoff hazard to the Protestant's home and possibly other homes in the area. The suggested compromise of 3 feet and the required rain guttering and spouting would appear to correct this potential problem. Otherwise, there does not appear to be any additional injury under Section 307 of the Baltimore County Zoning Regulations.

Testimony indicates that if the variances were granted, such use as proposed in the compromise position would not be contrary to the spirit of the Baltimore County Zoning Regulations and would not result in substantial detriment to the public good.

Pursuit to the advertisement, posting of the property, and public hearing on this petition held, and for the reasons given above, the requested variance shall be DENIED, however, the suggested compromise position variance shall be GRANTED as more clearly set forth immediately below.

The Petitioner's requested variance of 6 inches in lieu of the required 7-1/2 feet for an open projection carport is hereby DENIED, however, the suggested compromise variance and hereby is GRANTED for a 3 foot setback on the sideyard in lieu of the required 7-1/2 feet for an open projection carport subject to certain restrictions and conditions as more clearly set forth below.

Therefore, It is Ordered by the Zoning Commissioner of Baltimore County this 2 day of November, 1987 that the herein requested zoning variance to permit a sideyard setback of 6 inches in lieu of the required 7-1/2 feet for an open projection carport is and hereby shall be DENIED, however, a compromise Petition for Variance to permit a sideyard setback of 3 feet in lieu of the required 7-1/2 feet for an open projection carport is and hereby shall be GRANTED from an after the date of this Order, subject to the following conditions and restrictions which are conditions precedent to the relief granted herein:

1. The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the applicable appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. That the replacement awning shall be constructed in such a manner as to cause no water runoff to impact the properties located to the north or west of the Petitioner's home. All rain water and additional natural runoff shall be directed to Garnet Road in a properly constructed system across the Petitioner's property.
3. That the Petitioner shall leave an open area of 3 feet between the property line and the edge of the awning structure in order for snow and ice to accumulate without falling on to the Protestant's property in excessive amounts.
4. The carport may not be enclosed and no additional walls or structure may be built in this area.

J. ROBERT HAINES
ZONING COMMISSIONER
BALTIMORE COUNTY

JRH:am
cc: Peoples Counsel

RE: PETITION FOR VARIANCE : BEFORE THE ZONING COMMISSIONER
N/S Garnet Rd., 98' E of Old : OF BALTIMORE COUNTY
Harford Rd., (2700 Garnet Rd.)
9th Election District :
JOHN F. FLAHERTY, JR., et ux, :
Petitioners : CASE NO. 88-89-A

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Phyllis Cole Friedman
Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Peter Max Zimmerman
Deputy People's Counsel
Room 222, Court House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 7th day of August, 1987, a copy of the foregoing Entry of Appearance was mailed to Mr. and Mrs. John F. Flaherty, 2700 Garnet Rd., Baltimore, MD 21234, Petitioners.

Peter Max Zimmerman
Peter Max Zimmerman

PETITION FOR ZONING VARIANCE

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 307.1, C.1.1, 301.1 to permit a side yard setback of 6 inches in lieu of the required 7.5 feet for an open projection (carport).

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (Indicate hardship or practical difficulty)

- 1) Our awning was put up to replace previous awning, due to collapse caused by weight of snow and ice. Since the old awning had poor supports, causing collapse, we felt a carport awning across the driveway was a safer alternative and presented a better appearance.
- 2) Our awning covers and protects the area over the basement way and our side entrance. (Our primary entrance.) It also provides protection and shelter for our newly purchased car.
- 3) It also allows an area for our one year old baby to play outdoors, with protection from above. Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser: Legal Owner(s):
(Type or Print Name) JOHN F. FLAHERTY, JR.
Signature (Type or Print Name)
Address DONNA CHRISTIL FLAHERTY
City and State DONNA CHRISTIL FLAHERTY
Attorney for Petitioner: 2700 GARNET RD. 661-1103
(Type or Print Name) Address Phone No.
Signature BALTO. MD 21234
City and State
Name, address and phone number of legal owner, contract purchaser or representative to be contacted
Address Name
City and State
Attorney's Telephone No.: Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 20th day

of July, 1987, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 1st day of September, 1987, at 9:30 o'clock

By M. Zoning Commissioner of Baltimore County.

DESCRIPTION FOR VARIANCE

2700 GARNET ROAD
9TH ELECTION DISTRICT

Beginning at a point on the north side of Garnet Road at a distance of 96 feet, more or less, east of Old Harford Road and running thence North 12° 41' East, 169.43 feet; thence South 70° 05' East, 50.39 feet; thence South 12° 41' West, 163.14 feet to the north side of Garnet Road; thence North 77° 19' West, 50.00 feet to the point of beginning.

PETITION FOR ZONING VARIANCE

9th Election District - 6th Councilmanic District
Case No. 88-89-A

LOCATION: North Side of Garnet Road, 96 feet East of Old Harford Road (2700 Garnet Road)

DATE AND TIME: Tuesday, September 1, 1987, at 9:30 a.m.

PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Zoning Variance to permit a side yard setback of 6 inches in lieu of the required 7.5 feet for an open projection (carport)

Being the property of John F. Flaherty, Jr., et ux, as shown on plat plan filed with the Zoning Office.

In the event that this Petition(s) is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be received in writing by the date of the hearing set above or made at the hearing.

BY ORDER OF
ARNOLD JASLOW
ZONING COMMISSIONER
OF BALTIMORE COUNTY

88-89-A

CERTIFICATE OF PUBLICATION
Office of
THE AVENUE NEWS

AUG. 13 19 87

JOHN F. FLAHERTY, JR., ET 9th ELECTION
DIST. TO ADVERTISE PO# 90658 REQ# N05132
N/S GARNET RD., 96' e of OLD HARFORD RD.
(2799 GARNET RD.) HEARING: TUESDAY,
09/01/87, at 9:30am. 84 LINES at \$42.00

The Avenue Inc.
per publisher
By David B. Caldwell

Susan Sander Obrecht

Publisher

411

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. J. Robert Haines, Zoning Commissioner
TO: Zoning Administration Date: August 20, 1987

Norman E. Gerber, AICP
FROM: Director of Planning and Zoning

SUBJECT: Zoning Petition 88-89-A

There are no comprehensive planning factors requiring comment on this petition.

Norman E. Gerber, AICP
Norman E. Gerber, AICP
Director

NEG:KAR:dme

cc: Ms. Shirley M. Hess, Legal Assistant, People's Counsel
File

RECEIVED
SEP 21 1987

ZONING OFFICE

CPS-008

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

James Dyer
TO: Zoning Supervisor Date: 7-30-87

James Thompson
FROM: Zoning Enforcement Coordinator

Item No. 471 (if known)
SUBJECT: Petitioners: Flaherty (if known)

VIOLATION CASE # C-87-1743
LOCATION OF VIOLATION 2700 GARNET RD.
DEFENDANT Flaherty ADDRESS 2700 Garnet Rd.
Bk/Ho. MR 21234

Please be advised that the aforementioned petition is the subject of an active violation case. When the petition is scheduled for a public hearing, please notify the following persons:

NAME	ADDRESS
Donald Stahle	8203 Old Harford Rd. Bk/Ho. MR 21234

After the public hearing is held, please send a copy of the Zoning Commissioner's Order to the Zoning Enforcement Coordinator, so that the appropriate action may be taken relative to the violation case.

CPS-008

IMPORTANT MESSAGE	
TO: J. HAINES	FROM: J. THOMPSON
DATE: 7-30-87	RE: 88-89-A
RECEIVED	SEP 25 1987
ZONING OFFICE	

88-89-A

John F. Flaherty, Jr.
Petitioner

Donna

The awning was knocked down by ice and snow.

Don Stahle
8203 Old Harford Rd.
21234

Oct. 1, 1987 - all held for letters concerning the conflict.

88-89-A

I do not want to require this be torn down, however, the Petitioner is wrong and it must be denied unless the parties work out an agreement.

I am giving them until Oct. 1, 1987 to reach an agreement.

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3333

J. Robert Haines
Zoning Commissioner

September 28, 1987



Dennis F. Eastman
County Executive

Mr. Donald Stahle
8203 Old Harford Road
Baltimore, Maryland 21234

Re: John F. Flaherty, Jr.
2700 Garnet Road
Case 88-89-A

Dear Mr. Stahle:

Attached please find copy of letter dated September 23, 1987 addressed to this office from Mr. John F. Flaherty, Jr. Please read over carefully and let me know if you have any questions or comments in writing no later than October 13, 1987.

Thanking you for your cooperation, I am,

Very truly yours,

J. ROBERT HAINES
ZONING COMMISSIONER

JRH:mmm
att.

you

9/23/87

RE 88-89-A

J. ROBERT HAINES
ZONING COMMISSIONER'S OFFICE
111 CANTY OFFICE BLDG - CHESAPEAKE AVE.
TOWSON, MD 21204

RECEIVED
SEP 25 1987

ZONING OFFICE

DEAR MR. HAINES;

THIS LETTER IS A FOLLOW-UP TO THE HEARING WE HELD WITH YOU ON 9/1/87, 9:30AM, REGARDING MY AWNING AND YOUR SUGGESTION MY NEIGHBOR, MR. DONALD STAHLE, THE COMPLAINT AND I ATTEMPT TO WORK OUT AN AMICABLE SOLUTION REGARDING THE EASE REDUCTION.

MR. STAHLE & I IMMEDIATELY MARKED THE AREA INVOLVED AND STATED TO BOTH AGREE A TWO FOOT REDUCTION, ALONG WITH THE ADDITION OF A GUTTER WOULD SUFFICE. SINCE THAT TIME I HAVE NOT BEEN ABLE TO GET MR. STAHLE TO DISCUSS THE MATTER. I HOPE HE HAS FORWARDED A LETTER CONFIRMING THIS MATTER.

LET ME THANK YOU FOR YOUR CONCERN, PATIENCE AND

J. ROBERT HAINES - ZONING COMMISSIONER

RE 88-89-A

ANTICIPATED FOLLOW-UP AND OBSERVATION. WE ARE ENDEAVORING TO CONCLUDE THIS PROBLEM IN WHAT MANNER YOU DETERMINE FAIR.

SINCERELY

JOHN F. FLAHERTY, JR.

John F. Flaherty, Jr.
(601-1123)

CC MR. DONALD STAHLE

9/23/87

cc: File

ZONING OFFICE