



**CIRCUIT COURT FOR BALTIMORE COUNTY,
MARYLAND**

401 Bosley Avenue, P.O. Box 6754
Towson, MD 21285-6754

Main: 410-887-2601

21-188-A

To: BALTIMORE COUNTY ZONING
111 WEST CHESAPEAKE AVE
TOWSON, MD 21204

Case Number:
Other Reference Number(s):

C-03-CV-23-001898

IN THE MATTER OF DORON NATIGA



**CIRCUIT COURT FOR BALTIMORE COUNTY,
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IN THE MATTER OF DORON NATIGA

ORDER

PETITION OF DORON NITIGA

*

* THE CIRCUIT COURT

FOR JUDICIAL REVIEW OF THE OPINION
OF THE BOARD OF APPEALS
OF BALTIMORE COUNTY

* FOR BALTIMORE COUNTY

*

IN THE MATTER OF
DORON AND SHIFRA NATIGA
LEGAL OWNERS AND PETITIONERS
Petition for Variance of the Property
Located at 3100 Marant Road

*

* Case No. C-03-CV-23-001898

*

3rd ELECTION DISTRICT

*

2nd. COUNCIL DISTRICT

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* * * * *

MEMORANDUM AND OPINION

The Petition for Judicial Review was filed in this case along with a Memorandum on 5/5/2023 and 12/6/2023 by Doron Natiga and Shifra Nariga from the Baltimore County Board of Appeals Decision in Case 21-188-A.

The Petition for Judicial Review is DENIED.

A.

All important to the case is correspondence to the court over the signature of Patricia A. McAllister, Esq Assistant County attorney for Baltimore County dated January 2,2024. McAllister was responding to a

memorandum from the undersigned Judge asking about a memo to be filed with the Board of Appeals for Baltimore County. In her correspondence, the attorney draws the court's attention to the following points:

1. Mr. Natiga filed a Petition for variance to permit an existing dwelling addition (carport) to remain with a zero-foot set back in lieu of the minimum required seven-foot setback. Mr. Natiga appeared *pro se*. His neighbor, Behnam Barkholder appeared *pro se* in opposition.
2. The Board issued an Opinion and Order denying the request on April 13, 2023.
3. Mr. Natiga filed a Petition for Judicial Review on May 5, 2023. Please note that on that Petition, Mr. Natiga noted Baltimore County Zoning Regulations as Respondent, when it should have been Mr. Barkholder, the individual who appeared to protest the petition. In addition, the Petitioner's certificate of service did not include Mr. Barkholder. Nevertheless, the Board of Appeals did provide Mr. Barkholder with notice of the Petition on May 10, 2023, as evidenced by the filed certificate of compliance.
4. The Board of Appeals is the Administrative Agency whose decision is on appeal, and not a party to the case before the Circuit Court. Accordingly, it is Mr. Barkholder, the individual who opposed the Petition, who should be listed as the proper respondent and the individual responsible for filing a responsive memorandum.

B.

Doron and Shifra Natiga filed the Petition for Judicial Review of the Board of Appeals Decision in Case No. 21-188-A. A hearing was scheduled for 5/27/2025 which none of the parties attended, even Mr. and Mrs. Natifa. One individual attended who represented himself as a neighbor of Mr. and Mrs. Natifa.

Stated in their Memorandum by Mr. and Mrs. Natifga were the following:

1. Navigating this process has been marked by unexpected challenges, including communication lapses and urgent deadlines.

2. Upon applying for judicial review, we sought assistance from the Free Help Center at the Circuit Court on Bosley Avenue. Despite initial guidance, we were informed that they not provide assistance for cases of this nature.
3. Subsequently, on June 14, 2023, an email from Christina Alear of Baltimore County advised us to pay for the preparation of a transcript and provided necessary documentation for court proceedings.
4. It was only on Friday, December 1, 2023, that we discovered a misdelivered letter at a neighbor's house. This letter outlining the requirement to file a memorandum by December 6, 2023, to prevent dismissal reached us belatedly. Despite our immediate efforts to seek an extension due to the delayed receipt, we encountered roadblocks, with no clear guidance on how to proceed.
5. In the absence of appropriate channels for communication, we have taken it upon ourselves to present this memorandum to the best of our ability within the allotted time. We believe that with the proper notification or guidance, we could have provided a more detailed and organized response to the impending deadline.

Introduction

6. In December 2019 amid the onset of the global pandemic, we embarked on the complex journey of obtaining permits for a house addition, including the construction of a carport over the driveway of our residence, located at 3100 Marnat Rd. Pikesville, Md. 21208. Simultaneously, a permit application was submitted to the cutting to the curb for the driveway.
7. Over the course of the next three years, navigating the bureaucratic landscape posed unprecedented challenges compounded by the impact of COVID-19. All interactions with the offices of Baltimore County were conducted remotely, primarily through mail correspondence, as physical visits were restricted due to the closure of public offices.
8. Despite limitations imposed by the pandemic, approvals were secured for both the driveway and house addition. However, unforeseen structural issues during construction necessitated modifications to the original roof plan, leading to a revaluation of the permit.

9. A complaint filed during construction initiated communications with Mr. Ryan Fisher uncovering a deficiency specifically related to the carport designation. Despite our prompt amendment of the permit to address this issue, challenges persist.

Key Points to Highlight

1. **Inspector's approval:** During the initial construction phase, the inspector approved the carport plans, inspecting and endorsing the footage of the carport beams in alignment with the approved plan.
2. **Neighbor Discussions:** In 2019, discussions with neighbors, including a conversation about water drainage concerns, was held to address potential flooding issues. The carport and roof were strategically planned to mitigate water related problems, with gutters designed to channel water away from the property.
3. **Structural Impact:** The carport is an integral part of the building's structure, and its removal would disrupt the entire drainage system, potentially flooding and damage to the property.
4. **Contractor's support:** Supporting letters from contractors emphasize the structural importance of the carport and its contribution to preventing water-related issues to all residents.
5. **County Support:** Despite initial confusion, the county has expressed support for the variance, acknowledging the misunderstanding and confirming that the issue may have been originated from administrative errors on their part.
6. **Board of Appeals Understanding:** During the Board of Appeals hearing, it was acknowledged that the issue may have stemmed from county confusion rather than fault on our part. This understanding prompted the Board to place a hold on the citation, demonstrating a willingness to assist in the variance process.
7. **Neighbor's Fire Hazard Concern:** In the first hearing, a neighbor raised concerns about fire hazards due to the proximity of the structure to his house. A subsequent inspection, documented in a letter to the Board of Appeals confirmed that there is no fire hazard associated with the carport structure.

8. **Health and Family Considerations:** Our initial plan to construct a carport was driven by health concerns for my wife, who has faced health challenges for the past 11 years. Her doctor has submitted a letter highlighting the necessity of the carport for her well-being. Additionally, the family situation with five children including 1-year old twins, further underscores the practical need for a carport.
9. **Surrounding House Examples:** Evidence was presented to the Board of Appeal, showcasing numerous houses in the vicinity with a 0 foot setback. Addresses and images were provided to illustrate the commonality of such setups, particularly in households with larger families.
10. **Neighbor Support Signatures:** The Board of Appeal has been provided with signatures from numerous residents in the next three blocks surrounding the property, demonstrating widespread support for the carport project.
11. **Zoning Department's Differentiation:** The attached letter from Mr. Zimmerman of the zoning department elucidates the distinction between our case and others where the department did not support variances. It highlights the unique circumstances and administrative errors that led to our situation.
12. **Backyard Flooding Issues:** Attached are pictures illustrating the significant flooding issues in our backyard. Neighbor Mr. Feldman, who accompanied us to discussions with the county, attested to the lack of drainage infrastructure behind our block, a contributing factor to the problem. He informed us that due to budget constraints, the county was unlikely to address this issue, urging us to find a solution independently.
13. **Uniqueness of the Property:** In evaluating the circumstances surrounding our property, it is critical to recognize its unique geographical characteristics. An examination of the county drain system map reveals a stark reality – our block stands out as the sole area in the vicinity devoid of any drainage infrastructure. Compounding this, the adjacent street, Northbrook, is situated five feet higher than our land.

This distinctive topography, while providing a picturesque view, poses significant challenges, especially during rainfall. The absence of a drainage system exacerbates the

flooding issue, transforming our backyard into an unusable space for extended periods after even a moderate and sustained rainfall. The problem is so pervasive that many of our neighbors have voiced considerable concerns during community meetings.

Our pursuit of a carport was not merely an aesthetic choice but a strategic response to the practical challenges imposed by our unique position. The integration of the carport into the house design was meticulously designed not only to protect our family's needs but also to contribute to a solution for the pervasive flooding problem that plagues our entire block.

Similar Cases and Precedents

In considering the circumstances of our case, it is beneficial to examine precedents and similar situations within Baltimore County. We've undertaken a thorough review of the county archives and identified instances where variances were granted for properties facing comparable challenges.

Neighborhood Consistency: Numerous houses within a three-block radius share a 0 ft setback for structures akin to our proposed carport. These cases stand as a testament to the commonality of such construction in our neighborhood. **Flooding mitigation:** Other residents in the area have faced similar drainage and **flooding issues**. In recognition of the shared problem, support signatures from the neighbors in the vicinity attest to the need for structures that contribute to water mitigation.

Administrative Oversights: Instances where administrative errors led to prolonged and complicated processes were found, mirroring our experience. Understanding these situations were rectified with variances, we hope for a similar resolution in our case.

Highlighting these parallels not only emphasizes the precedent of approving variances for unique situations but underscores the consistency within the neighborhood and county. We firmly believe that our case aligns with these precedents and merits similar consideration during judicial review.

Relevant Legal Precedent: Montgomery County v. Rotwein

During the limited time available for preparing this memorandum, a notable case came to our attention that bears some resemblance to our situation. *Montgomery County v. Rotwein*. In this case the county contested a variance granted for construction of a 2-car garage instead of a 1-car garage.

One key aspect of the *Montgomery County v. Rotwein* case was the contention by the county that alternate locations existed in the property for the garage, eliminating the need for a variance. Despite the differences between the cases, as we are not requesting a garage but an open carport, our unique circumstances being the only one of its kind, the *Rotwein* decision serves as an important reference point.

Key distinctions to emphasize:

- A.** Nature of the structure: Unlike *Rotwein's* request for a garage, our petition is for an open carport, a distinct structure with different implications for zoning.
- B.** Uniqueness: Our case stands as singular instance in the neighborhood, requesting a variance for a specific need unlike *Rotwein*, who sought an additional garage.
- C.** Lack of Alternative Options: Currently, we lack viable options on our property due to the existing driveway and limited space on the opposite side of our house. Even when compared to *Rotwein*, whose judgment was reversed, our situation lacks feasible alternatives with the property constraints.

By presenting the *Montgomery County v. Rotwein* case, we aim to underscore the unique circumstances of our variance request and distinguish it from cases that may seem similar on the surface but differ significantly in substance.

Summary

This case presents a highly different set of circumstances:

County Awareness: The county was aware of the carport during the issuance of the first permit.

Continuous Inspection: The building inspector actively inspected and approved the construction, including the carport throughout the building process.

Neighborhood Silence: Despite prior knowledge, the neighbor did not raise objections or concerns during the planning phase. Importantly, when the neighbor eventually communicated issues, we diligently addressed each concern, such as bringing in a professional to insure there is no fire hazard, demonstrating our commitment to resolving any problems.

Persistent inquiry: Mr. Fisher, over a year during the challenging COVID-19 period, tirelessly sought clarification from the building department regarding the approval discrepancy.

Zoning Missteps: Two separate zoning processes were initiated both leading to misunderstandings and unnecessary costs.

Common Neighborhood Practice: A carport setback of 0 ft is prevalent in the neighborhood, reinforcing the normalcy of such constructions.

Flooding Issue: The entire area faces a flooding problem, and the County acknowledges budget constraints for addressing it.

Family Hardship: The carport is not a luxury but an essential accommodation for a family facing health challenges.

Neighborhood Support: The neighborhood stands united in supporting a solution to both the flooding issue and the carport construction.

Integral Structure: the carport is already integrated into the existing house roof. Making its removal a substantial and unnecessary structural change.

County's Changed Stance: Even the County, traditionally opposed to such variance, acknowledged this in their letter.

In legal terms, the fundamental question arises: Having diligently followed all legal processes, providing complete information, and enduring a prolonged and arduous journey due to County mistakes, why should our property suffer and be subjected to damage when it poses no harm to anyone?

Conclusion:

This memorandum aims to provide a comprehensive overview of the events leading to the Board of Appeals decision in Case 21-188-A, with a particular focus on the challenges surrounding the carport designation. The outlined key points emphasize the importance of the carport structural integrity, water drainage considerations, and the supportive stance from neighbors and county authorities.

We trust that this information will contribute to a full assessment during the judicial review, highlighting the unintentional nature of the complications faced and our commitment to rectify any outstanding issues.

C. (The Opinion by the Board of Appeals)

The Board of Appeals Opinion as an appeal of Baltimore County Administrative Law Judge, Maureen Murphy's December 8, 2021 Opinion and Order is dated April 13, 2023. The ALJ an Opinion and Order denied a Petition for a Variance filed by Doron and Shifra Natiga for property located at 3100 Marnat Road, requesting variance relief from the Baltimore County Zoning Regulations ("BCZR") to permit to permit a dwelling addition (carport) to remain with a zero (0) ft. setback in lieu of the minimum required seven (7) ft. setback.

A *de novo* hearing was held before the Board on September 14, 2022, via WebEx. Petitioners Doron and Shifra Natiga appeared *pro se*. Neighbor, Ben Burkholder appeared in opposition, with a public deliberation held on November 10, 2022 via WebEx.

The subject property ("property") at 3100 Marnat Road is a 9,180 sq foot lot improved by a one (1) story home built around 1955. Petitioners purchased the property in 2019. The property did not have a driveway, garage, or a carport. (p. 1 of the Opinion)

Petitioners applied for, and obtained, a building permit (B967308) to construct a 1-story addition to the rear of the home. On January 30, 2020, a Residential Access Permit was issued to the Petitioners for the proposed driveway. (Pet. Ex. 2) On June 9, 2020, and June 25, 2020, a Baltimore County Building Inspector approved a foundation and concrete slab under Permit B967308 (Pet. Ex 6) (pp. 1-2 of the Opinion)

On or about October 2020, a complaint was filed with Code Enforcement that a carport, front driveway and 2-story addition were being constructed at the Property without a permit. (Pet. Ex. 2) Upon receiving the Code Enforcement Citation, Petitioner contacted Ryan Fisher from Baltimore County Code Enforcement. Mr. Fisher investigated the matter and determined that the permit obtained by the Petitioner was for the Second story addition only and not the carport. (Pet. Ex. 2) Ultimately, Mr. Fisher referred Petitioner to the Building Permit Office.

Petitioner was subsequently informed that the application for Permit B967308 did not state that a carport would be built. The architect plans showed a long-hatched area, part of which is where the carport now stands, part of which is the new driveway, but it was not labeled as a 'carport' and the request to build a carport was also missing from the application. (Pet. Ex. 7)

On December 7, 2020, Petitioner informed Mr. Fisher that he went to the county office and obtained a permit application for the carport and he was intending to apply for the permit soon thereafter. A few days later, Petitioner had to suddenly leave from December 13, 2020 through January 4, 2021. Due to his father's cancer diagnosis. He was out of the country from December 13, 2020 through January 4, 2021. (Pet. Ex. 10)

On January 19, 2021, Petitioner's architect revised the plans, correctly labeled the carport, and filed for a permit. (Pet. Ex. 2) On or about March 15, 2021, Petitioner was informed by Baltimore County Zoning that he was required to apply for the instant variance relief before the permit can be authorized. (p. 2 of the Board's Opinion)

During the hearing in front of the Board, Petitioner, Doron Natiga testified that after he moved into the property, he had to remove water from his basement every time it rained. He also testified that whenever it rained the properties on his block retained water in their backyards. After consultation with the Department of Public Works, it was learned that the sewer/drainage system that runs behind the back yards of the properties on his block is inoperative. This prohibits effective drainage for all of the properties on the block. He asserted that the construction of the carport alleviated the basement water issue, everywhere but in one place.

Mr. Natiga testified that his wife suffers from health issues. Additionally, they have prematurely born twins.

Ms. Shifra Natiga testified next. She stated that whenever it rains, water would flow over their neighborhood, Mr. Feldman's driveway on to their property. The driveway and carport the Natiga's installed

prevents water from flowing on their other neighbor Mr. Barkhordar's property. She stated that she has ulcerative colitis. This causes her to not retain nutrients. Additionally, they have a 3 year-old as well as the twins. It is very difficult for her to get the children to and from the car without the carport.

Mr. Feldman testified next. Mr. Feldman resides at 3028 Marnat Road. He is the Natiga's next-door neighbor. He spoke about the water issues for the properties on Marnat Road. He stated that he learned from the County that the yards need to be regraded to slope the proper way to alleviate the issue. Mr. Feldman does not have an issue with the Natiga's carport. (p. 3 of the. Natia's Decision.

Protestant, Mr. Ben Barkholder testified next. He resides at 3102 Marnat Road. He stated that he does not have water issue because he added a sump pump in his basement. He is the Natiga's next door neighbor. The carport that was erected is directly next to his bedroom window. He is opposed to the variance.

DECISION

The threshold issue is whether Petitioner's have met the test for entitlement to a variance as established in *Cromwell v. Ward*, 102 Md. App. 691, 651 A. 2d. 624 (1995).

In Order to grant a variance, Baltimore County Zoning Regulations (BCZR) §. 307.1 states, as relevant:

The County Board of Appeals . . . shall have and are hereby given the power to grant variances from height and area restrictions, from off street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request where strict compliance with Zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship. . . Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare.

In order to obtain a variance in this instance, Petitioners first must prove the uniqueness of the property and then that such uniqueness results in practical difficulty. See *Cromwell v Ward, supra*, 102 Md. App at 703-722, 651 A.2 at 430-440. The uniqueness element requires that the subject property have an inherent characteristic not shared by other properties in the area, such as shape, topography, sub-surface condition, environmental factors, historical significance access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. *Id.*, 102 Md. App. At 710-11, 651 A. 2d at 433-34, citing *North v. St. Mary's County*, 99 Md. App. 502, 514-15, 638 A. 2d 1175 (1994)

The second step of the variance test examines whether the disproportionate effect of the ordinance caused by the uniqueness of the property, creates practical difficulty for or unnecessary hardship on the owner of the property. *Cromwell*, 102 Md. App. at 694-95. With respect to practical difficulty, there is a three part review: (1) whether compliance with the strict letter of the restrictions governing area, set-backs, etc., would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome; (2) whether a grant of the variance would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved be more consistent with justice to other property owners; and whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured. *Trinity Assembly of God of Baltimore City, Inc v. People's Counsel*, 407 Md. 33, 83-84; 962 A. 2d. 404, 422, citing *McLean v. Soley*, 270 Md. 208, 214-15, 310 A. 2d 783, 787 (1973). The hardship at issue cannot be self-created. *Cromwell*, 102 Md. App. at 721-22, 651 A.2d at 439-40.

The first determination is that of the uniqueness of the property. The Board finds this prong is not satisfied in this case. The only evidence of uniqueness provided by the Petitioner is the fact that they have issues when it rains. Petitioner, Doran Natiga, himself testified that the water is not unique to their property because all the properties on his block have the same issue. As previously stated, the uniqueness element requires that the subject property have an inherent characteristic not shared by other properties. *Cromwell*, 102 Md. App. at 710-11. (p. 5 of the Board's decision.

The second determination is that of practical difficulty or hardship. The Board need not make a determination of practical difficulty or hardship because the uniqueness requirement has not been met. However, if the property were found to be unique, the Board finds this prong is not satisfied. The law is clear that a self-inflicted hardship cannot be the basis if a claim of practical difficulty. *Cromwell*, 102 Md. App. at 72

Additionally, applying the 3-part review described above, denial of the variance request does not unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Petitioner's house is not affected. The only area is the carport. Petitioners were granted the access permit for their driveway, which may remain without the

necessity of zoning relief. Also, there is no evidence that the grant of the variance would do substantial justice to Petitioner as well as other property owners, or that relief can be granted in such fashion that the spirit of the ordinance will be observed safely and welfare secured. The carport is directly adjacent to Mr. Barkhordar's bedroom window. There is no substantial justice or observing the spirit of the ordinance in having a carport constructed within feet of your bedroom window.

Finally, the Petitioners described the health issues of Mrs. Natiga and their twins as a basis for practical as a basis for practical difficulty or undue hardship. Their health issues make it difficult for Mrs. Natiga to get to and from their vehicles. While the Board certainly sympathizes with the Petitioners, the law is clear in that the practical difficulty or undue hardship must be caused by the uniqueness of the property. *Cromwell*, 102 Md. App. at 694-95. That is not the case here.

ORDER

THEREFORE, IT IS THIS 13th day of April, 2023, by the Board of Appeals of Baltimore County.

ORDERED, that the Petition for Variance to permit an existing dwelling addition (carport) to remain with a zero (0) ft. setback in lieu of the minimum requirement of seven (7) ft. setback, be and is hereby **DENIED**.

BOARD OF APEALS FOR BALTIMORE COUNTY


D.

Conclusion

As stated above, the Petition for Judicial Review is **DENIED**. Petitioners have spent a good portion of their time setting forth the facts they believe support their case.

The Board of Appeals has reviewed the facts presented by the Petitioners and has set forth in detail the applicable Maryland law dealing with just when a variance is able to be granted. The Board has thoroughly reviewed the matter and explained in detail why the Petitioners attempt to obtain a variance to establish a carport does not comply with Maryland law.

06/16/2025 2:50:43 PM



John F. Fader, II

Date

Judge

Entered: Clerk, Circuit Court for
Baltimore County, MD
June 23, 2025