

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
W side of Arry Place, 126 feet +/- N		
of Tommy True Court	*	DEPUTY ZONING
9 th Election District		
6 th Councilmanic District	*	COMMISSIONER
(8516 Arry Place)		
	*	FOR BALTIMORE COUNTY
Joseph and Marietta Kirk		
<i>Petitioners</i>	*	Case No. 2009-0130-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owners of the subject property, Joseph and Marietta Kirk. Petitioners are requesting variance relief from Section 415.A.1.D of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit the storage of recreational vehicle on the street in front of 8516 Arry Place. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the variance request was Petitioner Joseph Kirk and a neighbor, Bill Hesson, of 8505 Arry Place, who is supportive of the variance request. There were no Protestants or other interested persons in attendance at the hearing.

This matter is currently the subject of an active violation case (Case No. 52165) in the Division of Code Inspections and Enforcement. A citation for code violation has been issued in this matter due to the fact Petitioners are storing a recreational vehicle year-round on a residential street.

It should be noted, for the record, that the fact that a zoning violation is issued is simply ignored in this zoning case. For example, this means that the Petitioner cannot use the fact that a structure has been built to set a precedent in order to allow it to continue. Nor does the fact that a structure may be costly to remove or modify come into consideration of the zoning case. The

reason for this is that this condition is clearly self-imposed and as such cannot be a basis for the hardship or practical difficulty required by Section 307 of the B.C.Z.R. Conversely, the fact that something may have been done which could violate the law is not held against the Petitioner as some sort of an additional punishment. Zoning enforcement is conducted by the Department of Permits and Development Management, which has the authority to impose fines and other penalties for violation of law. This is not the province of this office.

Testimony and evidence offered revealed that the subject property is rectangular in shape and is part of a 56-unit townhome development called The Village of Old Harford. Petitioner has lived in the current townhouse residence since September, 1987. The property is located on the west side of Arry Place, west of Old Harford Road, in the Parkville area of Baltimore County. Just to the east of Arry Place, facing Old Harford Road, are single-family dwellings with mixed uses zoned R.O. Petitioners' property is part of a cluster of townhomes (approximately eight townhomes) on Arry Place. Also located behind and west of Petitioners' townhome is an end-of-group unit. This is also where Arry Place terminates and where Petitioner currently stores his recreational vehicle (trailer).

Petitioner first purchased a recreational vehicle (RV) from a neighbor in the same townhouse complex at 8504 Arry Way in 1990. At that time, the RV was parked in the same location where Petitioner currently stores his RV. In 1992, Petitioners purchased a new RV and parked it at the subject location on Arry Place. In 1999, Petitioners purchased another new RV and again parked and stored it at the subject location. In 2005, Petitioners purchased a third new RV (their current RV) and have parked and stored it at the subject location. In all, an RV has been parked at the subject location continuously for almost 20 years.

Petitioner was recently informed by Baltimore County's Division of Code Inspection that the RV cannot be stored and parked on the public street in excess of 24 hours and only for the

purpose of loading and unloading. Hence, Petitioners filed the instant Petition seeking variance relief from Section 415.A.1.D. In support of the Petition, Petitioner described the RV as a well kept vehicle, approximately 29 feet long and weighing 6,200 pounds. The RV is for his family's personal use only. Petitioner also notes that Arry Place is a one-block long dead-end road providing access only to eight townhomes along the road. The end of the street also abuts property that is zoned B.R. and used commercially (Sunbelt Rentals) and R.O. zoned property lines Old Harford Road.

Petitioners also stressed that the unusual characteristics of Arry Place make it unique and warrant granting the instant Petition. They also point out that this small townhouse community at Arry Place does not have the typical parking problems of larger townhouse neighborhoods – here, there is an abundance of street parking on and around Arry Place.

Also testifying in support of the relief was a neighbor, Bill Hesson, of 8508 Arry Place. Mr. Hesson lives in the same townhouse community as the Petitioners and has resided there since 1995 and has known Petitioners over that time period. The Petitioners' RV has been known to be stored at the subject location for a long time and is never in the way of other vehicles or areas used to turn around. Arry Place will never become a bigger townhouse community or be connected to any larger neighborhood. It will never become a through street, and there are no problems with parking while the RV is stored on Arry Place. Hence, Mr. Hesson is supportive of Petitioners' request.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated January 14, 2009 and it is the opinion of that Office that the proper storage of recreational vehicles is the responsibility of the owner. The storage of these vehicles in communities, especially those that are fairly dense with narrow streets can cause circulation problems as well as act as an eyesore if

not maintained properly. This issue has been continually identified as a problem in older suburban communities who have recently participated planning efforts. For these reasons the Office of Planning recommends denial of the request. In addition to the comment submitted by the Planning Office, the Office of People's Counsel also sent a letter dated December 30, 2008 to the zoning file, opposing the variance relief. The letter attached an e-mail from Stephen Weber with the Department of Public Works Traffic Engineering, both of which express concerns over storing a recreational vehicle on a public street, as well as questioning whether variance relief is even permitted from Section 431.A of the B.C.Z.R.

After careful review of all the testimony and evidence presented, I am persuaded to deny the variance request. In considering a variance request, I am required under Section 307.1 of the B.C.Z.R. to determine, under a two prong test, first whether there are special circumstances or conditions that exist that are peculiar to the land or structure which is the subject of the variance request; that is, whether there are unique features or characteristics of the property that drive the need for the variance. If that threshold requirement is met, I am then to determine whether strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship to Petitioners. Based on the test and evidence presented, I am not inclined to grant the requested relief. Although it is certainly understandable that the Petitioners would desire to store their RV close by, for reasons of both anti-theft and convenience, such cannot be the basis for permitting storage of a large recreational vehicle on a public street. In short, the property is not unique and is nearly identical to the eight adjacent townhome properties on Arry Place.

In this instance, I agree with the Office of Planning that proper storage of recreational vehicles is the responsibility of the owner. Allowing such a precedent to be set could cause future traffic circulation problems and could negatively impact a neighborhood's aesthetic appeal. I am

also persuaded by the evidence that granting the variance would not be in strict harmony with the spirit and intent of the Zoning Regulations, and that it would negatively affect the appearance and residential character of the neighborhood.

I also find that Petitioners have not proven the uniqueness standard, as required by *Cromwell v. Ward* 102 Md.App. 691, 651 A.2d 424 (1995). Hence, the variance request shall be denied.

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

THEREFORE, IT IS ORDERED this 10th day of February, 2009 by this Deputy Zoning Commissioner, that Petitioners' variance request from Section 415.A.1.D of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit the storage of recreational vehicle on the street in front of 8516 Arry Place be and is hereby DENIED.

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

____SIGNED_____
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz