

IN RE: PETITION FOR VARIANCE

SE corner of Lamport Road and
Tydyman Road
4th Election District
3rd Councilmanic District
(106 Lamport Road)

Irvin S. and Debra C. Sass
Petitioners

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY
* **CASE NO. 2010-0084-A**

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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, Irvin and Debra Sass. Petitioners are requesting Variance relief from Section 415A.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a recreational vehicle on a residential lot to be stored and situated 6.5 feet forward in lieu of 8 feet to the rear of a lateral projection of the front foundation wall of the dwelling. 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 were Petitioners Irvin and Debra Sass. As the property is located in the Reisterstown area, George Harman and Mary Molinaro with the Reisterstown-Owings Mills-Glyndon Coordinating Council appeared as interested citizens. Also appearing as a Protestant opposed to the requested relief was Calvin Reter of 326 Cherry Chapel Road in Reisterstown.

Testimony and evidence offered revealed that the subject property is primarily square-shaped, with a slight outward taper on the south side of the property, and consists of approximately 10,890 square feet or 0.25 acre, more or less, zoned D.R.3.5. The property is located at the southeast corner of Lamport Road and Tidyman Road, west of Main Street (a/k/a

Reisterstown Road), south of Butler Road, and west of Central Avenue in the Reisterstown area of Baltimore County. As shown on the site plan, the property is improved with a split foyer single-family dwelling built in 1965 and situated on a corner lot. The property is part of an older subdivision known as “Crandon” and many of the homes date from the 1960’s. As also shown in the photographs that were marked and accepted into evidence as Petitioners’ Exhibits 2A through 2E, the property is fairly wooded, with two very large, mature trees located in the front yard at the property line between the subject property and the adjacent property to the south at 238 Tidyman Road. It is also noteworthy that although the subject property is located at the corner of Lamport Road and Tidyman Road and has a street address of 106 Lamport Road, the dwelling actually fronts on Tidyman Road and the driveway running along the southern boundary fronts on Tidyman Road as well.

Petitioners explained that they have resided at the subject property since 1986. Approximately 5 years ago, they purchased a recreational vehicle (“RV”). The RV is a 1993 Winnebago “Minnie Winnie” model and is approximately 24 feet long. Petitioners customarily make extensive use of the RV during the summer months and intermittently during the fall and spring seasons. When not in use, Petitioners have parked and stored the RV in their driveway at the side of their home. At some point this past summer, the County’s Bureau of Code Enforcement and Inspections received a complaint that the RV was improperly parked in Petitioners’ driveway. A Code Inspector observed the property on August 7, 2009 and issued a Correction Notice for illegal parking of the RV in the driveway pursuant to Section 415A of the B.C.Z.R.¹ Shortly thereafter, Petitioners filed for the instant variance relief seeking to park their RV approximately 6.5 feet forward of the front foundation wall of the dwelling.

¹ Case No. CO 0065941.

In support of the variance request, Petitioners point out several unique features of the property that contribute to the need for variance relief. First, they indicate that the property is located on a corner lot. This virtually rules out storing the RV anywhere but where it is presently parked. If the RV were somehow parked on the Lamport Road side of the property, it would have significantly more visual impact than the present location. Second, the property is wooded, with a number of trees and shrubs throughout. The trees, especially the five or six mature trees located at the end of Petitioners' driveway, limits the extent to which Petitioners can park the RV further into the rear yard, unless those trees were removed and the driveway extended. Although this could be done, it would be costly, but in their view would unnecessarily take away mature, healthy trees that also act as a buffer. Also in support of the variance request, Petitioners submitted a petition signed by a number of nearby neighbors that indicates they have no problem with Petitioners parking their RV in the driveway as it stands presently. This petition, marked and accepted into evidence as Petitioners' Exhibit 3, was signed by Betty McCormick of 238 Tidyman Road, the neighbor immediately adjacent to the subject property and most affected by the presence of the RV in the driveway, as well as neighbors located at 104, 105, 107, 109, 117, and 120 Lamport Road.

Testifying in opposition to the requested relief was Calvin Reter of 326 Cherry Chapel Road. Mr. Reter resides in the Chartley North subdivision that is located just south of the subject property. Mr. Reter indicated that he is a longtime resident (almost 40 years) of the community and is a past president of the Chartley Homeowners Association and the Reisterstown-Owings Mills-Glyndon Coordinating Council ("ROG"). He indicated that he filed the initial complaint with Code Enforcement concerning the parking of Petitioners' RV. His daughter lives on Tidyman Road and the parking of the RV, as well as the general poor condition of Petitioners'

property, has been a sore spot for some time. Mr. Reter submitted several photographs that were marked and accepted into evidence as Protestant's Exhibits 1A through 1G. These photographs show several views of the subject property from Tidyman Road and Lamport Road. From the front of the property on Tidyman Road, the rear of the RV can clearly be seen. From the side views of the property, the RV is much more hidden from view by the trees and shrubs.

Mr. Reter explained that as a past leader in the community, he is very concerned that the Zoning Regulations be followed in order to maintain the consistency of neighborhoods and to keep communities stable. In his view, the Zoning Regulations are one of the single most effective tools that communities have in countering overdevelopment and neighbors who wish to make changes to their properties without regard to the community as a whole. He believes the Zoning Regulations should be strictly applied, especially in this case. One of the main reasons for this stance is what he contends is the generally poor condition of Petitioners' home and yard. The previously introduced photographs (Protestant's Exhibits 1A through 1G) show that Petitioners' property does have some overgrown shrubs and also has a chain link fence surrounding the rear yard that is old and rusted. The photographs also show Petitioners' home in need of some attention, with a deck that appears to have seen its better days and some peeling paint on one of the gable ends.

Also testifying as interested citizens were Mary Molinaro and George Harman. Ms. Molinaro is past president of the Chartley Homeowners Association and is President of ROG. Mr. Harman is past president of ROG and is currently the Zoning Committee Chair for ROG. They expressed general concerns with Petitioners' variance request and echoed Mr. Reter's testimony regarding adherence to the Zoning Regulations for the benefit of communities. In addition, although the subject property is not part of a homeowners association, Ms. Molinaro

expressed concerns on behalf of two homes very close to the subject property that are part of the Chartley Homeowners Association.

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 September 28, 2009 that indicates they do not oppose the variance request provided that screening is planted along the southern property boundary. This will create a visual barrier between the recreational vehicle and adjacent home at 238 Tidyman Court, which is the dwelling that is the most impacted by the parking of the recreational vehicle.

Section 415A.1.A of the B.C.Z.R. states that one recreational vehicle may be stored on a residential lot occupied by a single-family detached or semi-detached dwelling, and when in a side yard it must be situated at least eight feet to the rear of a lateral projection of the front foundation line of the dwelling. In the instant matter, Petitioners have requested variance relief in order to park their RV in the side yard, but 6.5 feet in front of the lateral projection of the front foundation line.

Considering all the testimony and evidence presented, I am persuaded to grant the variance relief. Although this Commission has often taken a dim view and is generally dubious toward the parking and storage of RV's in the front and side yards, in this case, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. In reviewing the record of this case, I find that the location of the subject property on a corner lot, combined with presence of mature trees throughout the property, especially the two trees at the southern property line and the five trees at the end of Petitioners' driveway, cause the Zoning Regulations to disproportionately impact the subject property as compared with others in the District. I therefore find the property unique in a zoning sense. I

also find that these factors limit the ability to Petitioners to strictly comply with the requirements of Section 415A of the B.C.Z.R. and would cause Petitioners undue prejudice and unreasonable hardship if the variance request was not granted. In particular, Petitioners would need to remove the trees at the end of the driveway and extend the impervious surface of the driveway at least 15 more feet in order park the RV as required by the Regulations. In my judgment, this would only accentuate the presence of the RV and would be environmentally imprudent. I further find that the variance can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare.

Although I can appreciate Mr. Reter's testimony regarding what he believes is a general lack of maintenance on the part of Petitioners toward their property, and is borne out to an extent by the photographs he introduced (Protestant's Exhibits 1A through 1G), this is more an issue that Petitioners should address themselves as good members of a community that desires attractive, well cared for homes and consistent property values. Moreover, if there are violations such as excessive high grass or vegetation or structural issues with the dwelling, then it is a matter best handled by the Code Inspections and Enforcement Bureau.

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 granted.

THEREFORE, IT IS ORDERED this 21st day of December, 2009 by this Deputy Zoning Commissioner, that Petitioners' Variance request from Section 415.A.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a recreational vehicle on a residential lot to be stored and situated 6.5 feet forward in lieu of 8 feet to the rear of a lateral projection of the front foundation wall of the dwelling be and is hereby **GRANTED**, subject to the following:

1. Petitioners are advised that they may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioners shall install landscape screening such as trees or shrubs along the southern property boundary to create a visual barrier between the recreational vehicle and the adjacent home at 238 Tidyman Court.

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