

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N side of Clearwood Road; 512 feet E		
of the c/l of Oakleigh Road	*	DEPUTY ZONING
9 th Election District		
5 th Councilmanic District	*	COMMISSIONER
(1818 Clearwood Road)		
	*	FOR BALTIMORE COUNTY
Charles T. and Eugunia G. Robinson		
<i>Petitioners</i>	*	CASE NO. 2010-0358-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, Charles T. and Eugunia G. Robinson. Petitioners are requesting Variance relief from Section 415A.1.A of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a recreational vehicle to be stored in the front yard in lieu of the required 8 feet to the rear of a lateral projection of the front foundation line of the dwelling. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the variance request were Petitioners Charles and Eugunia Robinson. There were no Protestants or other interested persons in attendance.

Testimony and evidence offered revealed that the subject property is rectangular shaped and consists of approximately 18,173 square feet or 0.417 acre, more or less, zoned D.R.5.5. As shown on the site plan and the zoning map that was marked and accepted into evidence as Petitioners’ Exhibit 2, the property is located on the north side of Clearwood Road, east of Oakleigh Road, in the Parkville area of Baltimore County. The property also has frontage to the north on Putty Hill Avenue. The property is improved with an existing 1½-story dwelling that

according to property tax records was constructed in 1956 and consists of approximately 1,485 square feet. There is an existing paved driveway/parking area that runs along the left side of the property from Clearwood Road to the front of the dwelling. There is also a concrete walkway running from the front door to Clearwood Road. This matter came before me as a result of a complaint registered with the Code Enforcement Division of the Department of Permits and Development Management. A Code Inspections and Enforcement Correction Notice was issued to Petitioners for parking a recreational vehicle (“RV”) in the front yard.¹ Hence, Petitioners filed the instant request for variance. Aerial photographs that were marked and accepted into evidence as Petitioners’ Exhibits 3A and 3B depict the improvements as well as location of the RV parked in the driveway in the front yard.

In support of the requested variance relief, Petitioners indicated that they have lived at the subject location for 46 years and have had an RV since 1968. They have always parked the RV in the exact same location in their driveway that is now the subject of the Code Enforcement violation. They then recounted the various RV’s they have owned and have parked in the front yard driveway of their home. Initially, they began with a Montgomery Ward pop tent trailer for about 4-5 years. Then they purchased a Hi-Lo Trailer that was about 16 feet long and elevated to a normal height. Next was a Sunline Travel trailer that was about 21 feet long. Finally, Petitioners purchased their present RV, a 1990 Mallard 27 foot motor home. They have parked this RV in its present location in the driveway since 1997, and have parked all of their RV’s there continuously since 1968. Mr. Robinson also pointed out that there is no room between his home and the side yards on each side of his property to park the RV in the rear yard as required by the Regulations.

¹ Case No: CO-0079167. The Active Violation Case Documents were contained in the case file and marked as Baltimore County Exhibit 1.

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 July 28, 2010 which indicates that they do not support Petitioners' request. The individual request by itself would not negatively affect the neighborhood character, but it would set the precedence for other similar requests (the neighboring property also has a parked recreational vehicle in the front yard) that would negatively impact the neighborhood.

In reviewing the testimony and evidence in this matter, it is difficult to find in favor of Petitioners on their variance request, given their relatively unremarkable lot. Although Putty Hill Avenue cuts through this "Hillendale" subdivision and gives the subject property double frontage on Clearwood Road and Putty Hill Avenue, this feature is largely unrelated to the instant variance request and does not drive the need for the requested relief.

However, near the conclusion of the hearing, based on the testimony adduced from Petitioners as to their continuous parking of the various RV's on the driveway of the subject property located in the front yard since at least 1968, I reviewed Section 415A of the B.C.Z.R. to determine whether Petitioners' parking of the RV's in the front yard of the property for this length of time would constitute a legal nonconforming use as permitted by Sections 101 and 104.1 of the B.C.Z.R. This is because it appears that Section 415A of the B.C.Z.R. is not codified in the B.C.Z.R. until 1974. The undersigned then reviewed the legislative history of this Regulation.

Section 415A of the B.C.Z.R. was enacted into law through Bill No. 29-1974 during the County Council's 1974 legislative session. A copy of the Bill indicates the regulation took effect on May 10, 1974. In reviewing the previous editions of the B.C.Z.R., it does not appear that there was a similar regulation in effect prior to Bill No. 29-1974. This Bill essentially carved out

a specific section in the B.C.Z.R. for the storage of recreational vehicles and delineated the manner and location in which a recreational vehicle could be stored on residential lots, and also defined the term “recreational vehicle” for the first time in Section 101 of the B.C.Z.R. Subsequently, in Bill No. 54-1993, the term “jet-propelled skis” was added to Section 101 of the B.C.Z.R. and this section was also amended to include certain “boats” within the definition of “recreational vehicle.” In addition, Section 415A was amended to include the storage of “recreational boats.” Finally, in Bill No. 84-2006, Section 415A.1 was amended to include a provision that recreational vehicles not be parked or stored on any street in a residential zone except during a 24 hour period for loading or unloading. Based on the testimony introduced at the hearing and my review of Section 415A of the B.C.Z.R. and its legislative history, a compelling argument can be made that Petitioners’ parking of their RV’s on the driveway located in the front yard of the subject property is legally nonconforming and, therefore, should be permitted to continue.

After reviewing the relevant Regulation and its legislative history, and considering of all the testimony and evidence presented, I find that Petitioners’ parking of their various RV’s through the years on their driveway located in the front yard of the subject property continuously since at least 1968 constitutes a legal nonconforming use pursuant to the definition of that term in Section 101 of the B.C.Z.R. and the use provision of Section 104.1 of the B.C.Z.R.; thus, I am persuaded to grant the relief requested as a special hearing to allow this use to continue. Although the request for relief was couched as a Petition for Variance and posted and advertised as such, the specific request was to permit a recreational vehicle to be stored in the front yard. The fact that I am granting the relief as a special hearing rather than a variance is a distinction without a difference because the evidence presented by Petitioners is the same in either case.

It is also worth noting that Petitioners Mr. and Mrs. Robinson are 79 and 75 years of age, respectively, and testified that, while they still use their RV on a regular basis with their grandchildren and extended family, they do not expect to keep the RV for the long-term future. With that in mind, the undersigned indicated to Petitioners at the hearing that if this use is permitted as a nonconforming use, it would not run with the land and be permissible for any subsequent property owners or family members, but would in this case be personal to Petitioners and would terminate upon their abandonment of the use and/or their sale, rental, or other conversion of the subject property to anyone other than themselves. Petitioners were in agreement with this restriction. Petitioners must also be mindful of Section 104.1 of the B.C.Z.R. which states that "... upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate."

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 dismissed as moot and the relief should be granted as a request for special hearing for a nonconforming use.

THEREFORE, IT IS ORDERED this 23rd day of September, 2010 by this Deputy Zoning Commissioner that Petitioners' Variance request from Section 415A.1.A of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a recreational vehicle to be stored in the front yard in lieu of the required 8 feet to the rear of a lateral projection of the front foundation line of the dwelling be is hereby **DISMISSED** as **MOOT**; and

IT IS FURTHER ORDERED that Petitioners' request to permit a recreational vehicle to be stored in the driveway of the front yard of the subject property as shown on the site plan and

the aerial photographs accepted into evidence as Petitioners' Exhibits 1 and 3A-3B, respectively, and approved as a request for Special Hearing in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) as a legal nonconforming use, be and is hereby **GRANTED**, subject to the following:

1. Petitioners may apply for permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at its 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. The relief granted herein shall be "*in gross*" and is personal to Charles and Eugunia Robinson for so long as they reside at 1818 Clearwood Road, and the approval shall not continue/pass to any successors in title, whether they be family descendants or others.

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