

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
SW side of Hillcrest Avenue; 510'		
SE of the c/l of Queen Anne Drive	*	OFFICE OF ADMINISTRATIVE
9 th Election District		
5 th Council District	*	HEARINGS FOR
(2521 Hillcrest Avenue)		
	*	BALTIMORE COUNTY
Gary C. and Susan L. Miller		
<i>Petitioners</i>	*	CASE NO. 2012-0189-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed by Gary C. and Susan L. Miller. The Petitioners are requesting Variance relief under Section 415A.1.A of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a recreational vehicle (travel trailer) to be stored with a side yard setback as close as 1 foot in lieu of the required 2.5.feet. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the variance request were Petitioners Gary C. and Susan L. Miller. There were no Protestants or other interested parties in attendance; however, a letter of support was received from Jason P. and Carrie L. Hartline, the immediately adjacent neighbors who reside at 2523 Hillcrest Avenue. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R., and the file does not contain any letters of opposition or protest.

This matter is currently the subject of a violation case (Case No. CO-0105948) before the Office of Administrative Hearings, and a copy of the Code Enforcement file was made a part of the zoning hearing file. It should be noted that the fact that a code violation is issued is generally not considered in a zoning case. Zoning enforcement is conducted by the Department of Permits,

Approvals, and Inspections, which has the authority to issue Correction Notices and Citations and to impose fines and other penalties for violation of law. On the other hand, the role of the Administrative Law Judge in this matter is to decide the discreet legal issue of whether the Petitioner is entitled to the requested zoning relief.

Testimony and evidence revealed that the subject property is 5,000 square feet, zoned DR 5.5 and located in the Harford Park subdivision. The Petitioners have lived at the location since 1997, and purchased the travel trailer in 2005. Petitioners stressed that the trailer has been in its present location without complaint since that time.

Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. The comments indicate no opposition or other recommendations concerning the requested relief.

Based upon the testimony and evidence presented, I am persuaded to grant the request for variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioners.

Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md 53, 80 (2008).

If the B.C.Z.R. were strictly enforced, the Petitioners would indeed suffer a practical difficulty and/or hardship. Indeed, the Petitioners would be forced to lease a commercial site for storage of the trailer, which has been in the driveway of their home for the past seven (7) years.

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the letter of support from the adjacent neighbors, who indicated they had “no issues or concerns” with the location of the trailer.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and after considering the testimony and evidence offered by the Petitioners, I find that Petitioners’ variance request should be granted.

THEREFORE, IT IS ORDERED, this 20th day of March, 2012 by this Administrative Law Judge that Petitioners’ Variance request from Section 415A.1.A of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a recreational vehicle (travel trailer) to be stored with a side yard setback as close as 1 foot, in lieu of the required 2.5.feet, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. The Petitioners may apply for a building permit and may be granted same upon receipt of this Order. However the Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason this Order is reversed, the Petitioners will be required to return and be responsible for returning said property to its original condition.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw