

IN RE: PETITION FOR VARIANCE
(8243 Longpoint Road)
William J. and Sandra V. Bathgate
Petitioners

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* **CASE NO. 2013-0020-A**

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by the legal owners, William J. Bathgate and Sandra V. Bathgate. The Petitioners are requesting Variance relief from § 415A.1.A of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to permit a recreational vehicle (tow behind trailer) to be stored in the front yard, in lieu of the required storage in the side or rear yard. 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 for this case was William and Sandra Bathgate. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

This matter is currently the subject of a violation case (Case No. CO-112273). 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.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. There were no adverse ZAC comments received from any of the County review agencies.

Testimony and evidence revealed that the subject property is 5,000 square feet (0.11 acres) and is zoned DR 5.5. The Petitioners have lived at the location since 2004, and they stressed that the trailer has been in its present location for almost two (2) years without complaint. The trailer (which is approximately 18' long and 8' wide) is parked on a parking pad (12' x 23') in the front of Petitioners' single-family dwelling.

Based upon the testimony and evidence presented, I will grant the request for variance relief. 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).

Petitioners have met this test. Their lot is narrow (50') and the current positioning of the travel trailer is the only available location given the site constraints. 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 two (2) 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 petition of support from the community, which contains signatures from approximately 30 nearby residents. See Exhibit 2.

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

THEREFORE, IT IS ORDERED, this 1st day of October, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from § 415A.1.A of the Baltimore County Zoning Regulations ("B.C.Z.R."), to permit a recreational vehicle (tow behind trailer measuring approximately 18' x 8') to be stored in the front yard, in lieu of the required storage in the side or rear yard, be and is hereby GRANTED.

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