

IN RE: PETITION FOR VARIANCE
(21 Right Aileron Street)
6th Councilman District
15th Election District
Ronald H. and Nellie I. Pugh
Petitioners

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* **CASE NO. 2013-0046-A**

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by the legal owners, Ronald H. and Nellie I. Pugh. The Petitioners are requesting Variance relief from §§ 416A.1.C, 1B01.1.18.b, and 400.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to permit an existing radio operator antenna with an 8' property line setback in lieu of the required 20', and to be located in the side yard in lieu of the required 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 Ronald H. Pugh, property owner, and Bob Driscoll, President of the Aero Acres Civic Improvement Association. There were no Protestants in attendance at the hearing. 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-114806). 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 submitted by any of the County reviewing agencies.

Testimony and evidence revealed that the subject property is 4,560 square feet and is zoned DR 5.5. The Petitioner had the radio tower in its present location for nearly 30 years (since 1984). A complaint was filed by an individual who does not live in the immediate neighborhood, and the Petitioner explained that the complainant held a grudge against him because on an earlier occasion the Petitioner assisted the Police in an investigation leading to the arrest of that individual.

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. As the site plan shows, the lot is approximately 1/10th of an acre, and there is no room in the rear yard to install a tower. In addition, Mr. Driscoll said the neighborhood fully supports the Petitioners, and a petition was submitted (Exhibit 2) with signatures of adjoining and nearby residents supporting the petition.

If the B.C.Z.R. were strictly enforced, the Petitioners would indeed suffer a practical difficulty and/or hardship, since they would need to dismantle the tower. 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 lack of opposition from the community and the lack of negative comments from Baltimore County reviewing agencies.

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 29th day of October, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from §§ 416A.1.C, 1B01.1.18.b, and 400.1 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to permit an existing radio operator antenna with an 8' property line setback in lieu of the required 20', and to be located in the side yard in lieu of the required 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.

JEB:dlw

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County