

IN RE: PETITION FOR ADMIN. VARIANCE *		BEFORE THE
(3 Kingston Cove Road)		
15 th Election District	*	OFFICE OF ADMINISTRATIVE
6 th Councilmanic District		
William J. & Charlotte M. Wesley, et al	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	CASE NO. 2013-0057-A

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Administrative Variance filed by the legal owners of the property, William J. and Charlotte M. Wesley, et al. The Petitioners are requesting Variance relief from § 417.4 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to permit the continued use of an existing pier and two mooring piles within 10 ft. of the divisional property line, and to permit encroachments beyond the divisional property line of 17 ft. and 25 ft. for an existing pier with new jet ski lift and new pier and boat lift respectively.

The subject property and requested relief is more fully depicted on the amended site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

This matter was originally filed as an Administrative Variance, with a closing date of October 1, 2012. On October 15, 2012, the Office of Administrative Hearings requested a formal hearing on this matter.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. There were no adverse comments submitted from any of the County reviewing agencies.

Appearing at the public hearing in support for this case was David Billingsley, who prepared the site plan.

Testimony and evidence revealed that the subject property is 28,880 square feet and is zoned DR 5.5. The property, which has frontage on Middle River, is improved with a single family dwelling and a pier. The Petitioners want to add a 25' long addition to the existing pier, and to construct jet ski and boat lifts on the pier.

Mr. Billingsley explained the site plan which contains the “divisional property lines” contemplated by B.C.Z.R. §417. The 17' and 25' encroachments are oriented toward the adjacent property owned by James Oliff, who submitted a letter supporting the petition. Exhibit 9. The other adjoining neighbors, Vincent and Kelly Auber, also wrote a letter supporting the petition. Exhibit 8.

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).

The Petitioners have met this test. The subject property is irregularly shaped and has an irregular shoreline as well. These factors make the property unique. The Petitioners would experience a practical difficulty if relief were denied, given that they would be unable to construct the contemplated improvements to the pier.

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 13th day of February, 2013 by the Administrative Law Judge for Baltimore County, that the Petition for Variance relief from § 417.4 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to permit the continued use of an existing pier and two mooring piles within 10 ft. of the divisional property line, and to permit encroachments beyond the divisional property line of 17 ft. and 25 ft. for an existing pier with new jet ski lift and new pier and boat lift respectively, be and is hereby GRANTED.

The relief granted herein shall be subject to and expressly conditioned upon the following:

1. Petitioners may apply for appropriate 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 to 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.

JEB:sln

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County