

IN RE: PETITION FOR VARIANCE
(12 Holly Spring Ct.)
14th Election District
6th Councilman District
Robert P. and Sheila M. Everett
Petitioners

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BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2013-0317-A

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Robert and Sheila Everett, the legal owners of the subject property. The Petitioner is requesting Variance relief from Section 415A of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: (1) to permit a recreational vehicle to be located in the front yard in lieu of the required side or rear yard; and (2) to allow an existing deck with a 1' side setback in lieu of the minimum setback of 7.5'. 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 requests was Robert Everett. The file reveals that the Petition was properly advertised and posted as required by the Baltimore County Zoning Regulations. There were no Protestants or interested citizens in attendance at the hearing, although the file contains an anonymous letter objecting to the variance petition.

The only substantive Zoning Advisory Committee (ZAC) comment received was from the Department of Planning (DOP). Although that agency does not oppose the side yard variance for the deck, they suggest that the Petitioners seek an alternative location for the RV.

Testimony and evidence revealed that the subject property is approximately 6,789 square feet and is zoned DR 3.5. The Petitioners bought the home in 2001, and have stored a travel trailer on the lot since 2005. Their current trailer (shown in Exhibit 2) has been in its present location (the Petitioners' driveway) since 2009. An anonymous complaint was filed with the County, and the Petitioners were instructed to seek zoning relief. When they filed their petition, the County reviewer noticed the placement of the deck as shown on the plan, and instructed Petitioners to include a request for that as well.

Based upon the testimony and evidence presented, I will grant the request for variance relief as it relates to the existing deck. 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 shown on the plan, the property is irregularly shaped (like a triangle) and is therefore unique. With regard to the deck, Mr. Everett indicated it was constructed before they purchased the home, and thus the Petitioners are dealing with existing site conditions.

The storage of the trailer presents a closer question. Mr. Everett indicated all of his neighbors are supportive of his request; indeed, he said many currently store boats and RV's in their driveways. The Petitioners' property is at the rear of a cul-de-sac, which mitigates somewhat the visual and visibility concerns identified by the DOP. Mr. Everett indicated that storage off-site would be approximately \$150 per month, and that his insurance rates would increase as well. At the same time, the trailer (known as a "5th wheel") is large (30' x 8') and creates a visual

obstruction and impedes slightly one's passage along the sidewalk.

Variance relief "runs with the land," meaning that subsequent owners of the property can also avail themselves of the benefits of the order in question. And that should certainly hold true for the deck at issue in this case. But the parking/storage of the RV trailer strikes me as a more ephemeral/transitory condition, and it would not seem appropriate in this case for zoning relief to be "perpetual" in nature, especially given the concerns identified above. As such, though I will deny variance relief for the trailer, I will provide a one-year grace period which will allow the Petitioners to explore alternatives for storage.

If the B.C.Z.R. were strictly enforced, the Petitioners would indeed suffer a practical difficulty, given they would need to dismantle a deck constructed many years ago. 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.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, variance relief shall be granted in part, and denied in part.

THEREFORE, IT IS ORDERED, this 3rd day of September, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Baltimore County Zoning Regulations ("B.C.Z.R"), to allow an existing deck with a 1' side setback in lieu of the minimum setback of 7.5', be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to permit a recreational vehicle to be located in the front yard in lieu of the required side or rear yard, be and is hereby DENIED, although the Petitioners are hereby provided a "grace period" of one (1) year from the date of this Order, after which time they must comply with the B.C.Z.R. as it pertains to storage of recreational vehicles.

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