

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(2909 Stockton Road)	*	OFFICE OF
10 <sup>h</sup> Election District		
3 <sup>rd</sup> Council District	*	ADMINISTRATIVE HEARINGS
Robert M. & Sherry Nally		
<i>Owners</i>	*	FOR BALTIMORE COUNTY
Petitioners		
	*	<b>Case No. 2016-0254-SPHA</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of Robert M. & Sherry Nally, legal owners (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”): (1) to clarify the definition of trailer versus recreational vehicle; and (2) to allow three (3) utility trailers in lieu of the allowed one (1). In addition, a Petition for Variance seeks: (1) to approve a setback of five (5) feet for a utility trailer in lieu of the required twenty-five (25) ft.; (2) to allow utility trailer parking in the front half of the lot in lieu of the required rear half of the lot; (3) to allow three (3) utility trailers in the rear lot in lieu of one (1) utility trailer; and (4) to allow an existing shed to be located in the side yard in lieu of the rear yard. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the requests were owners Robert & Sherry Nally and surveyor Bruce Doak. Francis X. Borgerding, Jr., Esq. represented the Petitioners. Two neighbors attended the hearing to obtain additional information regarding the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A

substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP).

### SPECIAL HEARING

The first special hearing request seeks to “clarify the definition of trailer versus recreational vehicle.” Both of these terms are defined in B.C.Z.R. §101.1, and to that extent I am hesitant to provide any clarification, which just might have the opposite effect. The issue apparently arose after the Bureau of Code Enforcement issued Petitioners a citation for having three (3) recreational vehicles on the property. The B.C.Z.R. provides a fairly specific definition of “recreational vehicle,” and lists six different species of this genus.

Having reviewed that definition and the photographs (Ex. 2) submitted at the hearing, I do not believe the vehicles in question are recreational vehicles. They are commonly referred to as “utility trailers,” although the B.C.Z.R. does not distinguish between a trailer and utility trailer. In any event, it might not matter much in the end, since the Regulations limit to one the number of recreational vehicles (RVs) and trailers which may be kept on residential property for non-commercial purposes. And though the wording used is slightly different, both trailers and RVs must be parked/stored in the rear yard.

The second special hearing request seeks to allow three utility trailers in lieu of the one permitted under the Regulations. Petitioners stated they have owned the trailers for nearly 14 years, and use them to transport ATVs, motorcycles and a compact tractor. They indicated they have never received a complaint regarding the trailers, and received a code citation concerning them only when a county inspector was investigating a complaint of an illegal service garage being operated at the property. Petitioners stated a service garage is not being operated at the premises, and they testified that aspect of the complaint has been dismissed.

## VARIANCE

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

With regard to variance request number 4, Petitioners have met this test. The lot has irregular dimensions and is therefore unique. Petitioners would experience practical difficulty if the regulations were strictly interpreted because they would be required to raze the existing shed, which was constructed approximately 14 years ago when they purchased the property. Finally, I find that this 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.

But I do not believe the same can be said for variance request numbers 1-3, pertaining to storing the three trailers in the front yard. While Petitioners' property and trailers appear to be well-maintained, the neighbors in attendance expressed concern (which I believe is well-founded) that others in the community own trailers and equipment in poor condition which would be an eyesore if stored in the front yard. They fear that granting the variance could set a dangerous precedent. The DOP also noted in its ZAC comment that storing trailers in the front yard does not promote "orderly development and general welfare of the community." Finally, Mr. Nally testified that one reason for parking the trailers in the front is that it is convenient. In these circumstances I do not believe Petitioners would experience a practical difficulty or hardship if variance request numbers 1-3 were not granted.

THEREFORE, IT IS ORDERED this 14<sup>th</sup> day of June, 2016, by this Administrative Law

Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”): (1) to clarify the definition of trailer versus recreational vehicle; and (2) to allow three (3) utility trailers in lieu of the allowed one (1), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance which seeks as follows (1) to approve a setback of five (5) feet for a utility trailer in lieu of the required twenty-five (25) ft.; (2) to allow utility trailer parking in the front half of the lot in lieu of the required rear half of the lot; and (3) to permit (3) utility trailers in the rear lot in lieu of one (1) utility trailer, be and is hereby DENIED.

IT IS FURTHER ORDERED the petition for variance to allow an existing shed to be located in the side yard in lieu of the rear yard, be and is hereby GRANTED.

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

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
2. The utility trailers shall be used only for household and/or recreational purposes. No commercial use of the trailers shall be permitted.
3. No recreational equipment (i.e., ATVs, motorcycles, jet skis) shall be stored on the trailers for a period in excess of 6 months.
4. The special hearing relief granted herein authorizes Petitioners to keep on their premises the three (3) utility trailers as shown in the photographs marked as Ex. #2. This relief is considered personal to Petitioners and does not “run with the land.” If Petitioners sell or otherwise dispose of one or two of the current trailers, they shall not be permitted to replace such trailer(s), and may in that event only keep one such trailer on their property in accordance with the Regulations.

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

JEB/sln

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Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County