

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(8801 Mylander Lane)		
9 th Election District	*	OF ADMINISTRATIVE
5 th Council District		
8801 Mylander, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	CASE NO. 2015-0132-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance on behalf of the legal owner of the subject property. The Petitioner is requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §238.2 to permit a building to side property line setback of 20 ft. in lieu of the required 30 ft. A site plan for the project was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the request was John Smyth, a principal of the entity owner, and Dwight Little, a professional engineer whose firm prepared the site plan. Adam Baker, Esq., represented the Petitioner. There were no Protestants or interested citizens in attendance. The Petition was advertised and posted as required by the B.C.Z.R. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP). That agency did not oppose the request, provided the exterior of the main building is improved and constructed of high quality materials.

The subject property is approximately 2.235 acres and is zoned BR, BM. The site is improved with an existing building which is vacant and in poor condition. This was formerly used as a Moose fraternal lodge. Petitioner purchased the property last year and will relocate

from Baltimore City the Calvert Plumbing and Heating Company, and this site will be the new home for the business. The existing building will be renovated, and Petitioner proposes to construct a 40' x 100' storage building to house inventory, equipment and materials. Variance relief is required to locate the storage building as shown on the plan. Exhibit 1.

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).

Petitioner has met this test. The site has irregular dimensions and is bisected by an easement for access to a cell tower located at the rear of the site. As such, the property is unique.

Petitioner would experience a practical difficulty if the regulations were strictly interpreted, since it would be unable to construct the storage building in the proposed location. 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 absence of County or community opposition.

BASIC SERVICES MAPS

People's Counsel, Peter Zimmerman, submitted a letter dated January 29, 2015 concerning the "F" traffic shed for Joppa Road/Loch Raven Blvd. Mr. Zimmerman indicated that the Department of Public Works (DPW) confirmed the site is situated within a traffic deficient area. But, as counsel noted at the hearing, the traffic standards in the Growth Management regulations restrict only "nonindustrial" development. B.C.Z.R. §4A02.4.D.1. The regulations define as an "industrial use" any use listed in "...Section 253.1.B, 253.2.A...."

B.C.Z.R. §101.1. A warehouse or storage facility use is listed in both B.C.Z.R. §§ 253.1.B.16 and 253.2.A.6., and is therefore considered “nonindustrial” development. As such, I do not believe B.C.Z.R. §4A02 is applicable in this case.

THEREFORE, IT IS ORDERED, this 5th day of February, 2015, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations (“B.C.Z.R.”) §238.2 to permit a building to side property line setback of 20 ft. in lieu of the required 30 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its 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, Petitioner would be required to return the subject property to its original condition.
2. Prior to issuance of permits, Petitioner must submit for approval by DOP elevation drawings of the office building on site.

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