

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(1417 Shoemaker Road)		
3 rd Election District	*	OF ADMINISTRATIVE
2 nd Council District		
Santo Mirabile	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	CASE NO. 2016-0054-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 Santo Mirabile, owner of the subject property (“Petitioner”). At the time the Petition was filed, Mr. Mirabile was the contract purchaser, although at the hearing Petitioner indicated he had closed on the property and was now the owner. Petitioner is requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §§ 255.1 and 238.2 for a side yard setback of 10 ft. in lieu of the required 30 ft. A site plan was marked as Petitioner’s Exhibit 1.

Santo Mirabile appeared in support of the petition. Patrick Richardson, a professional engineer whose firm prepared the site plan, appeared and assisted the Petitioner. The Petition was advertised and posted as required by the B.C.Z.R. No Protestants or interested citizens attended the hearing. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Environmental Protection and Sustainability (DEPS) and the Bureau of Development Plans Review (DPR).

The subject property is approximately 93,306 square feet and is zoned ML & MLR. Petitioner operates a construction business, and plans to use the property for a storage facility and office for his company. To do so, variance relief is required.

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).

Petitioner has met this test. The site is irregularly shaped and contains significant environmental constraints. As such it is unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because he would be unable to use the property in the manner proposed. 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 Baltimore County and/or community opposition.

THEREFORE, IT IS ORDERED, this 30th day of October, 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.”) §§ 255.1 and 238.2 for a side yard setback of 10 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 his 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. Petitioner must provide landscaping and lighting at the site, as determined in the sole discretion of the Baltimore County Landscape Architect.
3. Petitioner must comply with the ZAC comment of DEPS which is attached hereto and incorporated herein.

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