

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(2713-2715 North Point Road)</b>		
12 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
7 <sup>th</sup> Council District		
Treasure Coast Management, LLC,	*	HEARINGS FOR
<i>Legal Owner</i>		
25 Midway, Inc., <i>Lessee</i>	*	BALTIMORE COUNTY
Petitioners	*	<b>CASE NO. 2016-0122-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance on behalf of Treasure Coast Management, LLC, owner of the subject property, and 25 Midway, Inc., Lessee (“Petitioners”). Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) § 409.6.A.2 to permit 22 parking spaces in lieu of the minimum 63 spaces. A site plan was marked as Petitioners’ Exhibit 1.

Mitch Kellman with Daft-McCune and Walker, Alex Friedman, and Pearnell Wilson appeared in support of the petition. Kelley James, Esq. appeared as counsel and represented the Petitioners. The Petition was advertised and posted as required by the B.C.Z.R. Several neighbors attended the hearing and opposed the request. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR). Both agencies noted landscape plans would be required prior to issuance of permits.

The subject property is approximately 18,775 square feet and is zoned BL CCC. For many years, an Italian restaurant operated at the property. Last year the Petitioners opened “Papa’s Smokehouse and Saloon”. Petitioners would like to construct an outdoor patio area for seasonal dining. 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).

The property was the subject of a prior zoning case (1973-233-A), which granted variance relief to permit 25 parking spaces in lieu of the required 56. As such, it is arguable based on that order that Petitioners have satisfied the burden for variance relief. But, I do not believe 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 testimony of the adjoining neighbors, all of whom testified parking on Oakwood Road is “horrendous,” and photos were submitted to substantiate that claim. The Petitioners’ restaurant has been successful, which is a positive influence on the surrounding area. Even so, the restaurant operates with just 22 parking spaces, and the present request would increase the parking deficiency and potentially exacerbate the parking woes along Oakwood Road.

THEREFORE, IT IS ORDERED, this **11<sup>th</sup>** day of **January, 2016**, 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.”) § 409.6.A.2 to permit 22 parking spaces in lieu of the minimum 63 spaces, be and is hereby DENIED.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB:dlw