

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(8833 Belair Road)		
11 th Election District	*	OF ADMINISTRATIVE
5 th Council District		
8833 Belair LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2016-0245-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 8833 Belair LLC, legal owner of the subject property (“Petitioner”). Petitioner requests Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: (1) to permit 62 spaces in lieu of the required 118 spaces, pursuant to section 409.6.A.2; (2) to permit 7.5 ft. parking space to street right-of-way setback in lieu of the required 10 ft. pursuant to section 409.8.A.4; and (3) to permit 7.5 ft. landscape buffer in lieu of 10 ft., pursuant to section 409.8.A.1. A site plan was marked as Petitioner’s Exhibit 1.

John Mazarakis and Mitch Kellman appeared in support of the Petition. Jennifer Busse, Esq. represented the Petitioner. The Petition was advertised and posted as required by the B.C.Z.R. No Protestants or interested citizens attended the hearing. Zoning Advisory Committee (ZAC) comments were submitted by the Department of Planning (DOP), the State Highway Administration (SHA) and the Bureau of Development Plans Review (DPR).

The subject property is approximately 39,770 square feet and is zoned BL, DR 5.5 and DR 10.5. The commercial property is located along Belair Road, and was formerly the site of a restaurant and other small businesses operated out of several one and two-story structures. Petitioner purchased the property in 2010, and recently razed all of the existing commercial

buildings, which had become an eyesore. Petitioner then constructed an attractive two-story commercial building that will contain a Seasons Pizza Restaurant and other retail tenants.

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 property is split-zoned and there is a grade change which slopes down to the rear of the site. As such the property is unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because it would be unable to open its restaurant and lease other tenant space. 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. Petitioner will install enhanced landscaping along Belair Road, which will screen the parking spaces at the entrance to the site. Mr. Mazarakis testified he operates 30 Seasons Pizza locations, and by reviewing company records he determined carry-out orders comprise approximately 65% of the total revenue. This reduces the need for off-street parking, and in similar situations parking space variances are frequently granted to fast-food restaurants due to the fact the great majority of customers use the drive-thru rather than dine-in option.

THEREFORE, IT IS ORDERED, this 3rd day of June, **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.”) as follows: (1) to permit 62 spaces in lieu of the required 118 spaces, pursuant to section 409.6.A.2; (2) to permit 7.5 ft. parking space to street right-of-way

setback in lieu of the required 10 ft. pursuant to section 409.8.A.4; and (3) to permit 7.5 ft. landscape buffer in lieu of 10 ft., pursuant to section 409.8.A.1. , 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. Proposed dumpster at east rear corner of the site must be screened in accordance with the requirements of condition H of the Baltimore County Landscape Manual.
3. Prior to issuance of permits both the Development Plan and Landscape Plan must be amended to reflect the relief granted herein.

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/sln