

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(900 Eastern Blvd.)		
15 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
7 <sup>th</sup> Council District		
Sweta Investment, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	<b>CASE NO. 2017-0201-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by the owner of the subject property (“Petitioner”). The Petitioner is requesting variance relief from the Baltimore County Zoning Regulations (B.C.Z.R) as follows: (1) to allow certain modifications to landscape manual standards; (2) to permit 2 stacking spaces behind menu board in lieu of the required 5 spaces; (3) to permit drive-thru lane to block entry to or exit from off-street parking spaces; (4) to allow for exclusion of a separate loading/unloading area; and (5) to permit two directional signs 11.08 ft. in height in lieu of the permitted 6 ft. height. A site plan was marked as Petitioner’s Exhibit 1.

Professional engineer John C. Povalac, David Roberson and Naresh Patel appeared in support of the petition. Lawrence E. Schmidt, Esq. represented 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) and the Bureau of Development Plans Review (DPR). Neither agency opposed the requests.

The property is approximately 16,741 square feet and is zoned BL-AS. The site is located at the intersection of Marlyn Avenue and Eastern Boulevard in Essex. The property is improved

with a commercial building which has been vacant for 4+ years. Petitioner proposes to raze that building and construct a new Dunkin Donuts franchise. Mr. Povalac testified (via proffer) the area is almost entirely commercial, and the site is situated along a busy thoroughfare with public transit access. He explained deliveries will be made when the Dunkin Donuts is closed, and that in his opinion a loading zone was not necessary.

Mr. Povalac also noted the Design Review Panel (DRP) reviewed and approved (with conditions; *See* Ex. 7) the site plan in this case, including a rendered plan showing proposed landscaping. Petitioner has also prepared a schematic landscape plan for the site (Ex. 4) which will soon be reviewed by the County's landscape architect.

Concerning the first variance request regarding modifications to certain landscape manual standards (and in response to DPR's ZAC comment concerning same), Mr. Povalac explained only three items will potentially require a modification: i.e., the setback for the dumpster (4 ft. in lieu of 10 ft.), the width of the landscape island at the drive thru (8 ft. in lieu of 9 ft.), and the width of the landscape strip along the east side of the site (4 ft. in lieu of 6 ft.), which adjoins a liquor store. In my opinion these are modest requests which should be granted.

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 has irregular dimensions and is bordered on two sides by public roadways. As such it is unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because it would be unable to construct and operate the new

business. 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 community and/or Baltimore County opposition. In addition, the site has been vacant for many years and is an eyesore, and the new business will greatly improve the appearance of the site and be a welcome addition to the community.

THEREFORE, IT IS ORDERED, this 22<sup>nd</sup> day of March, **2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance as follows: (1) to allow certain modifications (as enumerated hereinabove) to landscape manual standards; (2) to permit 2 stacking spaces behind menu board in lieu of the required 5 spaces; (3) to permit drive-thru lane to block entry to or exit from off-street parking spaces; (4) to allow for exclusion of a separate loading/unloading area; and (5) to permit two directional signs 11.08 ft. in height in lieu of the permitted 6 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 the DOP a plan and elevations demonstrating compliance with the conditions imposed by the Design Review Panel.
3. Prior to issuance of permits Petitioner must submit for review and approval a landscape and lighting plan for the site, excepting the modifications to landscape manual standards granted above.

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:sln