

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(9 Deneison Road)		
8 th Election District	*	OF ADMINISTRATIVE
3 rd Council District		
Justin Kotler	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2017-0306-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Justin Kotler, owner of the subject property (“Petitioner”). Petitioner is requesting variance relief from § 1B01.2.C.1.a of the Baltimore County Zoning Regulations (“B.C.Z.R”) as follows: (1) to approve a two-way drive aisle of 9 ft. in lieu of the required 20 ft.; and (2) to permit a non-residential side setback of 10 ft. in lieu of the minimum required side setback of 20 ft. A site plan was marked as Petitioner’s Exhibit 1.

Owner Justin Kotler and professional engineer Rick Richardson appeared in support of the petition. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the B.C.Z.R. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP). That agency did not oppose the request, but suggested a landscape plan should be submitted for the site.

The site is approximately 18,353 square feet in size and zoned ROA. The property is improved with a single family dwelling constructed in 1960, and according to the tax records the original owner lived in the home from 1960-2017. Petitioner purchased the property in 2017, and his wife plans to operate a medical office (“FirstChoice Family Medicine”) at the property. The ROA zone contains increased setbacks for noncommercial uses, which required Petitioner to

obtain zoning relief.

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 site conditions have been in existence since 1960, and Petitioner is prohibited by the ROA regulations from relocating or enlarging the structure in any respect. As such, the property is unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because he would be unable to operate a medical office at the property, a use permitted in an ROA zone. Finally, I find that the variances 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.

THEREFORE, IT IS ORDERED, this 3rd day of **July, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance: (1) to approve a two-way drive aisle of 9 ft. in lieu of the required 20 ft.; and (2) to permit a non-residential side setback of 10 ft. in lieu of the minimum required side setback of 20 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 at the site as determined in the sole discretion of the Baltimore County Landscape Architect.

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:dlw