

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(611 Reisterstown Road)		
3 <sup>rd</sup> Election District	*	OF ADMINISTRATIVE
2 <sup>nd</sup> Council District		
Elle Management, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	<b>CASE NO. 2018-0275-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 Elle Management, LLC, legal owner of the subject property (“Petitioner”). The Petition seeks variance relief from Sections 232.B, 509.4.A, 409.4.C, 409.3 & 409.8.A.5 of the Baltimore County Zoning Regulations (“BCZR”) as follows: (1) to permit an existing office (converted dwelling) with a side yard setback of 5 ft. in lieu of 15 ft.; (2) to permit an entrance driveway aisle width of 17.3 ft. in lieu of 20 ft.; (3) to permit a two-way driveway aisle width of 16.7 ft. and 21.9 ft. in lieu of 22 ft.; (4) to permit two parallel parking space widths of 18 ft. in lieu of 21 ft. and four standard parking space depths of 17.7 ft. in lieu of 18 ft.; and (5) to permit a dead-end aisle with no backup area in lieu of the required sufficient backup area. A site plan was marked as Petitioner’s Exhibit 1.

Joseph Openden appeared in support of the petition. Mike Pierce appeared on behalf of the Pikesville Communities Corporation. The Petition was advertised and posted as required by the BCZR. 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 site is approximately 23,928 square feet in size and zoned BL. The property is

improved with a dwelling constructed in 1886. The dwelling was in poor condition when Petitioner purchased the property last year. Petitioner, who is a licensed home improvement contractor, renovated the home and plans to use it as an office for his business.

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 is narrow and deep (72' x 310') and is therefore unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because it would be unable to operate its business at the site. Finally, I find that the variance can be granted in harmony with the spirit and intent of the BCZR, and in such manner as to grant relief without injury to the public health, safety and general welfare.

Mr. Pierce expressed concern with the fact that the proposed parking spaces and drive aisles were only marginally sufficient, and he believe a sufficient back-up/turnaround area should be provided at the existing “edge of pavement” shown on the site plan. While he acknowledged (as Mr. Openden testified) Petitioner’s office will not generate a large volume of traffic or demand for parking spaces, Mr. Pierce feared that a subsequent owner or user of the site could generate more traffic and yet still be able to avail itself of the relief granted in this case.

Those are reasonable concerns, but I believe they are ameliorated to some extent in the circumstances of this case. As an initial matter, other than for the existing side yard setback, the variance requests pertain to the parking regulations in BCZR §409. Should another user or owner seek to operate a more traffic-intensive use at the site it is likely it would be required to provide

additional parking spaces pursuant to BCZR §409.6. In addition, as Mr. Openden noted there is more than sufficient space at the rear of the site to provide additional parking spaces and/or a turnaround area should business conditions warrant such an expansion. I believe sufficient parking is shown on the plan to accommodate Petitioner's office and I will therefore not impose any additional requirements in that regard.

In addition to its comment regarding the need for a landscape plan, the Bureau of DPR requested Petitioner to provide in the public right-of-way a concrete apron "to match the driveway on the property." Presumably this refers to the curb cut width of 14 ft. while the driveway on Petitioner's property is 17.3 ft. in width. As noted above, I do not believe the contractor's office will generate much vehicular traffic and therefore the existing point of ingress/egress appears to be sufficient. More importantly, any improvements of this nature would require SHA approval (since Reisterstown Road is a state highway) and be subject to its construction guidelines, which would be an expensive and time consuming ordeal for a small business owner. In addition, the SHA conducted a "field inspection" and in a letter dated April 16, 2018 said it had no objection to the variance requests.

THEREFORE, IT IS ORDERED, this 7<sup>th</sup> day of **June, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to Sections 232.B, 509.4.A, 409.4.C, 409.3 & 409.8.A.5 of the Baltimore County Zoning Regulations ("BCZR") as follows: (1) to permit an existing office (converted dwelling) with a side yard setback of 5 ft. in lieu of 15 ft.; (2) to permit an entrance driveway aisle width of 17.3 ft. in lieu of 20 ft.; (3) to permit a two-way driveway aisle width of 16.7 ft. and 21.9 ft. in lieu of 22 ft.; (4) to permit two parallel parking space widths of 18 ft. in lieu of 21 ft. and four standard parking space depths of 17.7 ft. in lieu of 18 ft.; and (5) to permit a dead-end aisle with no backup area in lieu of the required sufficient

backup area, 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 Baltimore County approval a landscape plan for the site.
3. No outside storage of construction materials or extended parking of commercial vehicles and/or trailers shall be permitted at the site.

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