

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(1801 York Road)		
8 th Election District	*	OF ADMINISTRATIVE
3 rd Council District		
1801 YR, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2018-0300-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by 1801 YR, LLC, legal owner of the subject property (“Petitioner”). The Petition seeks variance relief from §238.2 of the Baltimore County Zoning Regulations (“BCZR”) as follows: (1) to permit a side building to property line setback of up to 24 ft. in lieu of the otherwise required 30 ft., and (2) to permit a side building to property line setback of up to 3 ft. in lieu of the otherwise required 30 ft. A site plan was marked as Petitioner’s Exhibit 1.

Professional engineer Gerry Powell appeared in support of the petition. Jennifer R. Busse, Esq. represented the Petitioner. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”). That agency does not oppose the request.

The site is approximately 2.72 acres in size and zoned BR. The property is improved with two commercial buildings. In a 2010 zoning case (No. 2010-0297-A) Petitioner obtained variance relief permitting a building-to-building setback of 32' in lieu of the required 60'. Recently, Petitioner amended the development plan for this site with DRC approval, and a lot

line has been created between these two commercial buildings. As such, the variance relief granted in the 2010 case is no longer needed since each building will now be situated on its own lot. But the new lot line has generated the need for building setback variances; no improvements of any type are proposed at this juncture.

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).

As noted in the 2010 zoning case, there is a grade change between this site and the adjoining shopping center. As such the property is unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because it would be required to raze or relocate the buildings. 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. This is demonstrated by the absence of County and/or community opposition.

THEREFORE, IT IS ORDERED, this 25th day of **June, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to Section 238.2 of the Baltimore County Zoning Regulations (“BCZR”): (1) to permit a side building to property line setback of up to 24 ft. in lieu of the otherwise required 30 ft., and (2) to permit a side building to property line setback of up to 3 ft. in lieu of the otherwise required 30 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.

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