

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(9701 Beaver Dam Road)		
8 th Election District	*	OF ADMINISTRATIVE
3 rd Council District		
Premier A-2 Timonium MD, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2018-0354-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Premier A-2 Timonium MD, LLC, legal owner of the subject property (“Petitioner”). The Petition seeks variance relief from Sections 255.1 and 238.2 of the Baltimore County Zoning Regulations (“BCZR”) for a side setback between buildings of 23 ft. in lieu of the required 60 ft. A site plan was marked as Petitioner’s Exhibit 1.

Scott Cooper and professional engineer David Taylor appeared in support of the petition. Adam M. Rosenblatt, Esq. represented the Petitioner. There were no Protestants or interested citizens in attendance. 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”), the Bureau of Development Plans Review (“DPR”) and the Department of Environmental Protection and Sustainability (“DEPS”). None of the reviewing agencies opposed the request.

The site is approximately 2.44 acres in size and zoned ML-IM. A Macaroni Grill restaurant was operated at the site for many years. That restaurant closed and while vacant the building was destroyed by fire. Petitioner proposes to construct a self-storage facility at the site.

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 has an irregular shape and is therefore unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because it would be unable to construct the proposed 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.

The DOP suggested a crosswalk be added at the site, and Mr. Taylor explained the plan shows an internal crosswalk and he highlighted its location. The Bureau of DPR noted a floodplain exists on the property, and Mr. Taylor testified the limits of the floodplain are shown on the plan with dashed lines. He noted Petitioner will not in any way impact the floodplain, and that no buildings or new improvements of any kind would be constructed within the limits of the floodplain. As such, I do not believe Petitioner should be required to perform a floodplain study in this instance. Mr. Taylor testified there is no history of flooding at the site, and he noted the floodplain was mapped most recently in 2008. In these circumstances I concur with Mr. Taylor's opinion a floodplain study should not be required in this case.

THEREFORE, IT IS ORDERED, this 7th day of **August, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to Sections 255.1 and 238.1 of the Baltimore County Zoning Regulations ("BCZR") for a side setback between buildings of 23 ft. in lieu of the required 60 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. Petitioner must comply with the DEPS ZAC comment, a copy of which is attached.

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