

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(4061 North Point Blvd.)		
15 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
7 <sup>th</sup> Council District		
Kien T. Le	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	<b>CASE NO. 2019-0101-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 Kien T. Le, legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief pursuant to the Baltimore County Zoning Regulations (“BCZR”) to permit a proposed commercial building with side yard setbacks of 16 feet each in lieu of the minimum required 30 feet each, and a one-way drive aisle width of 10 feet in lieu of required 12 feet. A site plan was marked as Petitioner’s Exhibit 1.

Kien T. Le 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 BCZR. Substantive Zoning Advisory Committee (ZAC) comments were received from the State Highway Administration (“SHA”), the Department of Planning (“DOP”) and the Bureau of Development Plans Review (“DPR”). None of the review agencies opposed the requests.

The site is approximately 20,286 square feet in size and zoned BR-AS. The property is unimproved, although there is a billboard sign in the southeast corner of the site. Petitioner indicated he does not know who owns that sign and he does not receive any lease payments or income related to the billboard. The sign, referred to in the order as an “advertising structure,” was ostensibly approved as a special exception in Case No. 1983-0007-X. It would seem the

billboard is nonconforming and, in 2012 upon the expiry of the abatement period specified in BCZR Section 450.8.D, now unlawful.

In any event, Petitioner proposes to construct on the site a one-story commercial building which would function as a service garage, a use permitted by right in the BR-AS zone. Petitioner has requested a variance, which 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 subject property has irregular dimensions and is therefore unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because he would be unable to construct the proposed building. 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.

In its ZAC comment the DOP stated that agency was operating under the assumption used vehicles would not be sold from this site. As an initial matter, the definition in BCZR Section 101.1 of “service garage” encompasses the sale of vehicles, and prior zoning orders have permitted service garages to sell a limited number of vehicles on a monthly/yearly basis. But more to the point in the present case, a “used car lot” was permitted by special exception in 1957, and there is no indication that special exception has been extinguished or abandoned. *See* Case No. 1957-4302-X. Petitioner stated it is not his intention at this time to sell vehicles at the site, although he indicated he would like to have that option in the future. Based on the cited case I believe used

vehicles could be sold at this location, although to do so Petitioner would need to submit a revised site plan showing all uses proposed at the site, and he may very well need further zoning relief for off-street parking, setbacks, or other BCZR requirements.

THEREFORE, IT IS ORDERED, this 10th day of **December, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance to permit a proposed commercial building with side yard setbacks of 16 feet each in lieu of the minimum required 30 feet each, and a one-way drive aisle width of 10 feet in lieu of required 12 feet, 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) Prior to issuance of permits Petitioner must submit for approval by Baltimore County landscape and lighting plan for the site.
- (3) No temporary signage shall be permitted along the property frontages.

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