

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(7609 Fitch Lane)		
14 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
5 <sup>th</sup> Council District		
Randy McMonigle	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2019-0122-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 Randy McMonigle, legal owner of the subject property (“Petitioner”). As amended by the undersigned at the outset of the hearing (to add a second variance request pertaining to the width of an access driveway) Petitioner is requesting variance relief from Sections 255.1 & 238.2 of the Baltimore County Zoning Regulations (“BCZR”) for a side yard setback of 27' in lieu of the required 30'. A site plan was marked as Petitioner’s Exhibit 1.

Professional engineer Rick Richardson and Randy McMonigle 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. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Bureau of Development Plans Review (“DPR”).

The site is approximately 13,148 square feet in size and is zoned ML-IM. The property is improved with a small single-family dwelling (888 sq. ft.) constructed in 1908. Petitioner plans to raze the existing structure and construct on the site a one-story (1,500 sq. ft.) commercial/industrial building. Given the shape of the lot a side yard variance is required before the building can be constructed as shown on the site plan.

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 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 Bureau of DPR questioned whether the property was served by public sewer. Mr. Richardson testified a public sewer main was extended to the site in or about 1988, as shown on the Department of Public Works (“DPW”) drawing admitted as Petitioner’s Exhibit 3. Mr. Richardson explained the prior owner of the dwelling never connected to the sewer, although Petitioner will do so when the proposed commercial building is constructed.

THEREFORE, IT IS ORDERED, this 19<sup>th</sup> day of **December, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance: (1) for a side yard setback of 27' in lieu of the required 30'; and (2) for a two-way driveway with a width of 12' in lieu of the required 20', 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.

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