

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(467 Pembroke Blvd.)		
12 th Election District	*	OF ADMINISTRATIVE
7 th Council District		
Joseph Citrano, Jr.	*	HEARINGS FOR
<i>Legal Owner</i>		
Kierra Thomas	*	BALTIMORE COUNTY
<i>Lessee</i>		
	*	CASE NO. 2019-0153-A
Petitioners		

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Joseph Citrano, Jr., legal owner of the subject property and Kierra Thomas, lessee (“Petitioners”). Petitioners are requesting variance relief from Sections 409.4 and 424.1 of the Baltimore County Zoning Regulations (“BCZR”) as follows: (1) to permit two (2) employee parking spaces which do not have direct access to an aisle for an office building less than 5,000 sq. ft.; and (2) to permit proposed 5' high stockade style fence with a setback as close as 0' to the property line in lieu of the required 20'. A redlined site plan was marked as Petitioners’ Exhibit 1.

Surveyor Bruce Doak and Joe Citrano appeared in support of the petition. An adjoining owner attended the hearing to obtain additional information regarding the requests. The petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Bureau of Development Plans Review (“DPR”) and the Department of Planning (“DOP”). Neither agency opposed the requests.

The site is approximately 5,622 square feet in size and is split-zoned BL and DR 5.5. The property is improved with a duplex-style commercial building used by two tenants. A hair salon is operated at 465 Pembroke Blvd. and Petitioners propose to operate a child care center (with

19 children enrolled) at 467 Pembroke, the subject property.

As originally filed the site plan proposed four parking spaces along the eastern side of the commercial building. However, the adjoining owner opposed this configuration and indicated the deed to her property at 465 Pembroke Ave. granted her an easement to use the 24' wide driveway in that location to access the rear of her property. The parties discussed the plan just prior to the hearing and Mr. Doak submitted a redlined site plan (admitted as Petitioners' Exhibit 1) which proposed just two off-street parking spaces in this area, leaving at least a 12' wide drive aisle to access the rear of the property. The proposed wood stockade fence enclosing the play area was also relocated on the plan to allow for vehicular ingress/egress. The redlined plan shows four off-street parking spaces, which is sufficient for the proposed use. The reconfigured parking spaces have access to a drive aisle, and thus the first variance request is no longer needed.

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 subject property and improvements have an unusual configuration. As such the property is unique. If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be unable to operate the child care facility at this location, a use permitted by right in the zone. 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.

THEREFORE, IT IS ORDERED, this 1st day of **February, 2019**, by the Administrative

Law Judge for Baltimore County, that the Petition for Variance to permit a proposed 5' high stockade style fence with a setback as close as 0' to the property line in lieu of the required 20' be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners would be required to return the subject property to its original condition.
2. As noted in DPR's ZAC comment dated December 19, 2018, the stockade fence cannot be located within the boundaries of the existing drainage and utility easement as shown on the subdivision plat marked and admitted as Petitioners' Exhibit 3.

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