

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(7923 Belair Road)		
14 th Election District	*	OF ADMINISTRATIVE
5 th Council District		
FP Sub, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
PSP Stores, LLC	*	BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	CASE NO. 2019-0201-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by FP Sub, LLC, legal owner, and PSP Stores, LLC, lessee of the subject property (“Petitioners”). The Petitioners are requesting variance relief from Section 421.2 of the Baltimore County Zoning Regulations (“BCZR”) to permit a pet shop within 64.7 feet of the nearest property line in lieu of the required 200 ft., and within 0 ft. of the nearest lease line in lieu of the required 200 ft. A site plan was marked as Petitioners’ Exhibit 1.

Joe Hochendoner, Mike Ogden, Ryan McCoy and Michael Gesell appeared in support of the petition. Justin Williams, Esq. represented Petitioners. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. No substantive Zoning Advisory Committee (ZAC) comments were received from any of the County reviewing agencies.

The subject property is approximately 18.37 acres in size and is improved with a strip shopping center. This case concerns only a 7,976 sq. ft. portion of the overall site, which is the space which would be occupied by the Lessee. The property is split-zoned BR, BL & DR 5.5. A Salvo auto parts store was previously located in the leased area. Petitioners propose to open a Pet Supplies Plus store in the space, but require variance relief given the 200 ft. setback requirement

for “pet shops” imposed by Section 421 of the BCZR.

As discussed at the hearing, a “pet shop” is an antiquated concept now that there are legal and/or ethical restrictions upon the sale of dogs and cats from retail storefronts. The Lessee would sell gerbils and similar small animals but would not sell dogs and cats at the store. Like other “big box” specialty pet retailers, the Lessee (which operates 435+ stores in 33 states) would sell pet foods, toys and supplies, and would also offer pet grooming and dog wash services. The imposition of a 200 ft. setback requirement seems unnecessary in this scenario, although the operation arguably constitutes a “pet shop” as defined under the BCZR.

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 irregular dimensions and was found to be unique in several recent zoning cases. *See* Case Nos. 2019-0062-A & 2017-0338-SPHA. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to operate the proposed pet shop. 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 5th day of **April, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to Section 421.2 of the Baltimore County Zoning Regulations (“BCZR”) to permit a pet shop within 64.7 feet of the nearest property line in lieu of the required 200 ft., and within 0 ft. of the nearest lease line in lieu

of the required 200 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- 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.

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