

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(6413 Windsor Mill Road)		
2 nd Election District	*	OF ADMINISTRATIVE
4 th Council District		
Mohammed & Farhana Mufti	*	HEARINGS FOR
<i>Legal Owners</i>		
Petitioners	*	BALTIMORE COUNTY
	*	CASE NO. 2019-0220-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Mohammed & Farhana Mufti, legal owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from Section 409 of the Baltimore County Zoning Regulations (“BCZR”) and the Baltimore County Landscape Manual as follows: (1) to allow 12 ft. wide driveway in lieu of the required 20 ft. for two way movement; (2) to allow 6 ft. offset from right-of-way in lieu of the required 10 ft.; (3) to allow 20 ft. backup aisle in lieu of required 22 ft. for parking spaces #1 and #2; (4) to allow no landscaping buffer between paved surfaces on adjacent commercial properties in lieu of required 6 ft. wide landscaping strip; and (5) to allow dumpster enclosure placed 2 ft. from residential property boundary in lieu of the required 10 ft. A site plan was marked as Petitioners’ Exhibit 1.

Mohammed Mufti appeared in support of the petition. A neighbor attended the hearing to obtain additional information regarding the requests. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”). As discussed below that agency did not oppose the bulk of the zoning requests.

The site is approximately 7,000 square ft. in size and is zoned BL. The property is

comprised of two lots (Lot 51 and 52 on Plat of Broadacres), each measuring 25 ft. x 140 ft. The property is improved with a small (572 sq. ft.) frame structure constructed in 1943. The structure was used as a single family dwelling until approximately 2006 when the Petitioners purchased the property. The property is now zoned BL and the structure is used for commercial purposes (i.e., a tobacco shop), as are all of the adjoining properties along Windsor Mill Road. Petitioners propose to construct a one-story addition (1,000 sq. ft.) although zoning relief is required before they can do so.

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 lots are narrow and quite deep, and the improvements were constructed long before adoption of the BCZR. As such the property is unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to construct the proposed addition. 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 indicated it did not support Petitioners' request to provide no landscaping. Mr. Mufti noted the entire site is paved and that to provide landscaping would be a difficult and expensive proposition. He also noted none of the adjoining properties have landscaping. I am sympathetic to Petitioners concerns, although I agree with the DOP Petitioners should explore with the County's Landscape Architect potential options for landscaping, which

would enhance the appearance of the site. Mr. Mufti indicated he believed planters or similar fixtures could be installed to provide a vegetative buffer along the front of the site. That seems like a reasonable compromise under the circumstances and a condition to that effect will be included below.

The DOP also questioned whether the proposed dumpster complies with Condition H in the landscape manual. Of course, the manual imposes a 10 ft. setback from a DR zone, although Petitioners have sought an “adjustment” to permit a 2 ft. setback. The plan shows a 6 ft. opaque wood fence along the DR 5.5 zone boundary at the rear of the site, and a “10’ x 10’ dumpster enclosure with gates.” In my opinion these measures will conceal the dumpster from adjacent properties and streets, which is the objective of Condition H.

The final issue raised by the DOP concerned whether the “existing 2nd floor apartment” as shown on the site plan was permitted since the property was not located within a CCC overlay district. As noted above, the existing structure was constructed in 1942 and has been used (at least in part) for residential purposes since that time. The adjoining owner (Albert Watson) testified he has lived at 6411 Windsor Mill for over 30 years and that he lives on the second floor and operates a salon/shoe repair business on the first floor. Although Petitioners did not specifically request any zoning relief concerning this issue, I believe a second story apartment is permitted in these circumstances as a lawful nonconforming use under BCZR Section 104. In addition, “residences” are permitted by right in the BL zone.

THEREFORE, IT IS ORDERED, this 28th day of **March, 2019, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from Section 409 of the Baltimore County Zoning Regulations (“BCZR”) and the Baltimore County Landscape Manual: (1) to allow 12 ft. wide driveway in lieu of the required 20 ft. for two way movement;**

(2) to allow 6 ft. offset from right-of-way in lieu of the required 10 ft.; (3) to allow 20 ft. backup aisle in lieu of required 22 ft. for parking spaces #1 and #2 shown on the site plan, and (4) to allow dumpster enclosure placed 2 feet from residential property boundary in lieu of the required 10 feet, 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. No temporary banners, flags or signs of any type shall be permitted at the subject property.
3. Petitioners shall provide appropriate landscaping along the Windsor Mill Road frontage, as determined in the sole discretion of the Baltimore County Landscape Architect.

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:dlw