

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(7308 Eastern Avenue)		
12 th Election District	*	OF ADMINISTRATIVE
7 th Council District		
WRC Properties, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	CASE NO. 2019-0270-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by WRC Properties, LLC, legal owner of the subject property (“Petitioner”). In the request as filed petitioner sought variance relief from Section 409.6 of the Baltimore County Zoning Regulations (“BCZR”) to permit a tavern with 23 parking spaces in lieu of the required 59 spaces. The zoning petition was amended at the hearing and a revised site plan (Petitioner’s Exhibit 1) was submitted reflecting the use was a restaurant, which requires 47 parking spaces.

Herbert Chavez and David Billingsley appeared in support of the petition. Gary R. Maslan, Esq. represented Petitioner. Several community members attended and opposed the request. 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. That agency did not oppose the request.

The site is approximately 16,814 sq. ft. in size and is zoned BR-AS. The Greek Village Restaurant, a family-owned business, operated at the site for over 30 years. That business closed and Petitioner purchased the property. Mr. Chavez, a principal of the entity which owns the property, testified he proposes to operate a restaurant with a liquor license, not a tavern. The

neighbors take issue with that characterization and believe the operation will be a tavern, since the liquor license Petitioner proposes to acquire from Martin's Hops Inn (Pet. Ex. 3) is known as a "tavern" license which would permit sales of alcohol, including carry-out package goods, seven days a week. Either use is permitted by right in the BR zone; the only distinction, for purposes of this hearing, is that the tavern use requires more parking spaces than a restaurant.

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).

Based on a review of the site plan and photos it does not appear as if the property has any defining characteristics (*e.g.*, shape, topographical changes, or environmental features) which would render it unique in a zoning sense. Mr. Maslan indicated the property was unique since the small lot has a large building located on it. But according to Mr. Billingsley's site plan (Note 6) the floor area ratio ("FAR") is only 0.17, which is far below the 2.0 FAR permitted in the B.R. zone. BCZR §238.5. Based on the evidence and testimony at the hearing I do not believe Petitioner has satisfied the stringent requirements for variance relief, especially since only 50% of the required parking for the restaurant would be provided on site. The *Cromwell* court held that variances should be granted "sparingly" since it is "an authorization for [that] ...which is prohibited by a zoning ordinance." *Id.* at 699.

THEREFORE, IT IS ORDERED, this 28th day of **June, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to the Baltimore County Zoning Regulations ("BCZR") to permit a restaurant with 23 parking spaces in lieu of the required

47 spaces, be and is hereby DENIED.

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