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| IN RE: PETITION FOR VARIANCE | * | BEFORE THE OFFICE |
| (8127 Pulaski Highway) | | |
| 15 th Election District | * | OF ADMINISTRATIVE |
| 7 th Council District | | |
| 8127 Pulaski Highway, LLC | * | HEARINGS FOR |
| <i>Legal Owner</i> | | |
| Petitioner | * | BALTIMORE COUNTY |
| | * | CASE NO. 2019-0545-A |

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by 8127 Pulaski Highway, LLC, legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief from § 303.2 of the Baltimore County Zoning Regulations (“BCZR”) to permit the front yard setback of 28 feet in lieu of the required 57.5 feet as the average of the front yard depths of the lots immediately adjoining on each side. A site plan was marked as Petitioner’s Exhibit 1.

Russell E. Stickel, the owner of the property, appeared in support of the petition. Edward C. Covahey, Jr., Esq. represented Petitioner and was assisted by Brian Dietz, the licensed surveyor who prepared the site plan. 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”). That agency has no objection to granting the petitioned zoning relief conditioned upon the successful resolution of the pending code citation discussed below.

The site is approximately 8,712 sq. ft. in size and is split-zoned BR-AS. Because there were no Protestants or interested persons in attendance Mr. Covahey was allowed to proffer the following evidence: The structure in question was constructed in 1940, before the enactment of the BCZR. It has been used continuously since then as a gas station and service garage. Mr. Stickel

first leased the property approximately seventeen years and subsequently purchased the property as the managing member and sole owner of 8127 Pulaski Highway, LLC. He has owned and operated Orem's Automotive Shop on the property that entire time. The company is in good standing with SDAT.

Mr. Stickel recently constructed a handicapped accessible addition on the front of the existing structure. He was unaware that he needed to obtain building permits to do so, and was also aware of the setback regulations for the parcel. After an anonymous complaint was filed with the Bureau of Code Enforcement he was cited for building without the required permits and received a fine in the amount of \$5,500.00. Administrative Law Judge Lawrence Stahl suspended all but \$1000.00 of the fine and Petitioner paid that portion. Judge Stahl advised Petitioner that he would hold the case open and would dismiss the remaining fine if Petitioner was granted the variance at issue here.

As noted, there were no Protestants at the hearing and no written objections in the file. The property is improved by an existing one (1) story building erected in 1940 and the property is further improved by the aforementioned addition to the existing building, which extends 7.4 feet toward Pulaski Highway. The Siesta Motel is on one side of the parcel and is set back 88 feet from Pulaski Highway. There is a dental office on the other side that is set back 27 feet from that road. Therefore, per BCZR § 303.2 the setback for the structure in question is supposed to be 57.5 feet – and average of the two adjoining structures.

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 in question was laid out on a plat that pre-dates the BCZR. It is slightly irregularly shaped and the adjoining parcel to the rear is zoned DR 5.5. As such the property is unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because it would require removal of both structures in order to comply with the current setback requirements. 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. Mr. Stickel has operated a successful auto repair business there for many years. Further, the setback of the structure in question, including the addition, creates a staggered but uniform sequence of setbacks with the adjoining properties.

THEREFORE, IT IS ORDERED, this **11th** day of **March, 2020**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from § 303.2 of the Baltimore County Zoning Regulations (“BCZR”) to permit the front yard setback of 28 feet in lieu of the required 57.5 feet as the average of the front yard depths of the lots immediately adjoining on each side, 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 its 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.

Signed _____
PAUL M. MAYHEW
Managing Administrative Law Judge
For Baltimore County