

RE: PETITION FOR VARIANCE	*	BEFORE THE BOARD
12102 Belair Road; W/S Belair Road,		
2165' N of c/line of Sunshine Avenue	*	OF APPEALS
11 th Election & 3 rd Councilmanic Districts		
Legal Owner(s): Wayne W. Davis	*	FOR
Lessee(s): Patricia Johns		
Petitioner(s)	*	BALTIMORE COUNTY
	*	2014-175-A

* * * * *

ORDER

This matter comes before the **County Board of Appeals (“the Board”)** as an appeal by People’s Counsel of the Opinion and Order issued by Administrative Law Judge (“ALJ”) John E. Beverungen on June 11, 2014. In his Opinion and Order ALJ Beverungen granted certain area variances requested by Petitioners, Wayne W. Davis, Owner, and Patricia Johns, Lessee, for a proposed fortune telling business at 12102 Belair Road. The appeal is scheduled for a hearing on January 14, 2015.

In consideration of the agreement of the parties, and under the terms hereinafter set forth, Petitioners agree to withdraw certain variances and modify other variances, and People’s Counsel agrees to withdraw its appeal of the June 11, 2014 Opinion and Order, and by way of explanation, state the following:

1. The subject property, known as 12102 Bel Air Road, is zoned Business Major (BM) with a Commercial Rural (CR) District overlay.
2. The Owner and Petitioner, Wayne W. Davis, proposes to lease space in a 1,330 square foot building (referred to as “personal services” on the site plan dated 1-31-14) on the property to Lessee and Petitioner, Patricia Johns, for a fortunetelling business, a permitted use in the zone. Certain variances are required in order to conduct the use.
3. Petitioners filed a Petition for Zoning Variance for the property, and sought the following variances from the Baltimore County Zoning Regulations (BCZR):
 - (i) to permit a side yard setback of 0 feet in lieu of the required 15 feet under Section 259.3.C.2.b.

(ii) to permit a rear yard setback of 12 feet in lieu of the required 15 feet under Section 259.3.C.2.b.

(iii) to not require the entire front, side and rear setback to be landscaped under Section 259.C.3.a.

(iv) to not require 7% of the parking lot to be pervious surface with a minimum one tree per eight parking spaces provided under Section 259.C.3.b.

(v) to approve an existing freestanding 24 SF sign that is not integrated with landscaping per Section 259.3.C.7.b. and is illuminated per section 259.3.C.7.c.

4. At the hearing before ALJ Beverungen, Petitioners withdrew the variances in paragraph 3 (iii), (iv) and (v) above and agreed to comply with BCZR on those matters.

5. At the hearing before ALJ Beverungen, Petitioners requested approval of the variances in paragraph 3 (i) and (ii) above.

6. ALJ Beverungen issued a written Opinion and Order and granted the following: “(1) to permit a side yard setback of 0’ in lieu of the required 15 ft; and (2) to permit a rear yard setback of 12 ft. in lieu of the required 15 ft.”.

7. In addition, on pages 2-3 of his Opinion, ALJ Beverungen acknowledged as “valid concerns” the issues raised in a letter from People’s Counsel to the ALJ dated April 22, 2014, as well as the testimony of the protestants at the hearing, regarding, among other matters, the legality of the structures and uses, including the trailers, mobile homes, motel, and apartments as well as the well and septic systems. ALJ Beverungen, however, believed these issues were not within the scope of a variance hearing, leaving opposing parties to conclude they could be addressed in another forum.

8. People’s Counsel filed a timely appeal from the ALJ’s Opinion and Order to the Baltimore County Board of Appeals.

9. On December 15, 2014, Petitioners’ Counsel, John B. Gontrum, notified People’s Counsel that certain variances for the site were not needed and he proposed to withdraw and modify the following variances:

A. A variance to permit a rear yard setback of 12 feet in lieu of the required 15 feet under Section 259.3.C.2.b. This variance pertained to an existing

one story apartment building and to an existing mobile home, neither of which were involved with the proposed use. Accordingly, this variance is withdrawn.

B. A variance to permit a side yard setback of 0 feet in lieu of the required 15 feet under Section 259.3.C.2.b. This variance applied to several existing mobile homes and a shed as well as to the 1,330 square foot personal services building, which sits approximately 11.2' ± from the side property line. The Petitioners have agreed to withdraw the variances from all structures but for the the 1,330 square foot personal services building so that the requested variance is modified to permit a side yard setback of 11 feet in lieu of the required 15 feet under Section 259.3.C.2.b. . .

10. Petitioners now request a single variance for the existing "personal services" building in which the fortune telling business is to be located.

11. People's Counsel believes it is not within the public interest to proceed with an appeal of the side yard setback variance of 11 feet in lieu of 15 feet, but does not wish to prejudice a party's right to proceed in the future with a separate action on the legality of other uses and structures on the property.

12. Petitioners agree that a separate action should not be barred by res judicata and collateral estoppel on account of the withdrawal of the variances by Petitioners and the concomitant withdrawal of the appeal by People's Counsel in this case. **In other words, the withdrawal of the appeal shall not prejudice the right of any party to challenge any other use or structure on the property. In any subsequent action Petitioners, however, may utilize any defense that may be allowed them including the relevant or material findings in other cases pertaining to the property.**

ORDER

THEREFORE, IT IS THIS 15th day of January, 2015, by the
County Board of Appeals for Baltimore County

ORDERED that Wayne W. Davis and Patricia Johns, for themselves, and his, her or their tenants, subtenants, co-owners, co-lessees, Personal Representatives, successors, heirs and assigns, shall not raise, nor support in any manner, either directly or indirectly,

res judicata and/or collateral estoppel in an action filed by any party, organization or People's Counsel based solely or in part on the withdrawal of the variances by Petitioners and the concomitant withdrawal of the appeal by People's Counsel in this case; and

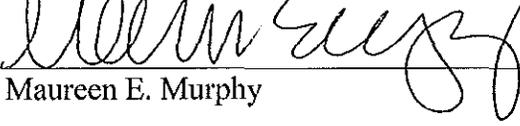
ORDERED that the appeal of People's Counsel shall be dismissed with prejudice; and

ORDERED that a Petition for Variance for a side yard setback of 11 feet in lieu of 15 feet for the existing structure (identified as "personal services" building on the aforesaid site plan) for a fortune telling business be and is hereby **GRANTED**.

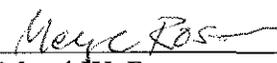
THE COUNTY BOARD OF APPEALS
FOR BALTIMORE COUNTY, by



David L. Thurston, Chairman



Maureen E. Murphy

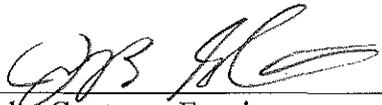


Meryl W. Rosen

AGREED AS TO SUBSTANCE AND FORM:



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Board of Appeals of Baltimore County

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January 15, 2015

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RE: *In the Matter of: Wayne W. Davis – Legal Owner*
Patricia Johns – Lessee
Case No.: 14-175-A

Dear Counsel:

Enclosed please find a copy of the final Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all **Petitions for Judicial Review** filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,


Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: See Attached Distribution List

In Re: Wayne W. Davis – Legal Owner
Patricia Johns -- Lessee

Distribution List
January 15, 2015

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Wayne W. Davis
Patricia Johns
Rick Richardson/Richardson Engineering, LLC
Michael Pierce
Tom Kneeshaw
Laverne Laubach
Sally Wagner
Ila Christenbury
Robin Beers
Doug Behr
Donna Kuhn
Stacy Johns
Lawrence M. Stahl, Managing Administrative Law Judge
Arnold Jablon, Director/PAI
Andrea Van Arsdale, Director/Department of Planning
Nancy West, Assistant County Attorney
Michael Field, County Attorney, Office of Law