

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
S side of Eastern Blvd., 61 feet W of		
the c/l of Lynbrook Road	*	OFFICE OF
15 th Election District		
6 th Councilmanic District	*	ADMINISTRATIVE HEARINGS
(2925 Eastern Avenue)		
	*	FOR BALTIMORE COUNTY
Cox Properties, LLC		
<i>Petitioner</i>	*	
Terry Martin		
Contract Purchaser	*	CASE NO. 2011-0194-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for consideration of a Petition for Variance filed by Cox Properties, LLC, the legal owner of the subject property. The contract purchaser is Terry Martin. Petitioner is requesting Variance relief as follows:

- From Section 409.8.A.2 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow parking to occur on a gravel surface in lieu of the requirement to have a durable and dustless surface; and
- From Section 409.8.A.4 of the B.C.Z.R. to permit setbacks of as little as 6 feet from the public right of way for existing parking spaces in lieu of the required 10 feet.

The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the variance request were Nichol Martin and Rick Richardson with Richardson Engineering, LLC the professional engineer who prepared the site plan.

Testimony and evidence offered revealed that the subject property is approximately 1.36 acres in size, and was most recently used as a service garage but is now vacant. Petitioner

proposed to raze the existing structure and construct a 9,600 square foot facility for the repair of boats and sales and service of related equipment.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Department of Environmental Protection and Sustainability dated January 11, 2011, which offers the following comments:

1. This lot is located within an Intensely Developed Area (IDA) of the Chesapeake Bay Critical Area (CBCA). Relief to the right-of-way setbacks and the durable and dustless surface requirement will not impact any of the Critical Area requirements for this lot. The 10% pollutant reduction requirement must be addressed to minimize adverse impacts on water quality that result from development activities.
2. The zoning request will not result in any forest clearing or wetland impacts, and mitigation may be required for any new impervious surfaces on this lot. Therefore, the subject zoning petition will conserve fish, wildlife, and plant habitat.
3. The CBCA regulations apply to development activities within the Critical Area, which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts. Any proposed development activities must meet all IDA regulations.

Comments were received from the Bureau of Development Plans Review dated December 27, 2010, indicating a preference for a paved lot, unless a gravel area is needed for a water quality facility. Comments were received from the Office of Planning dated January 31, 2011, which indicate that the Petitioner is proposing to replace the existing building of 1,160 square feet with a new structure of 9,600 square feet to be used for retail, office and service garage. The gravel lot is limited to the fenced area at the rear of the building for the service garage. The Planning Office has no objection to the proposed relief provided the following is submitted for review and approval prior to development plan approval: 1) architectural elevations and floor plans; 2) landscape and lighting plan; 3) location and screening of dumpster; 4) sidewalks, including connections to the public road; and 5) accurate limits of paving and fenced area.

After considering all of the testimony and evidence presented at the hearing, I am persuaded to grant the variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. The lot in question is basically rectangular, but has “rounded” corners, which complicate the setback calculations. In addition, Petitioner intends to keep all existing curbing at the site. Petitioner believes the curbing was installed many years ago, before setback requirements were in place. The variance relief will simply “legitimize” existing conditions, and the site will – to an observer – look as it has for years. The same is true with respect to the gravel area on the south side of the site, which is presently used to store recreational vehicles. Petitioner proposes to simply continue using the gravel area, for both parking and in connection with its marine business. Moreover, as shown on Petitioner’s Exhibit 4, a gravel surface will absorb more rain water than one made of bituminous concrete. Given that this site is located within the Chesapeake Bay Critical Area, allowing the gravel surface to remain will yield some environmental benefits.

I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioner. Petitioner will be making a large capital investment in this project, and the denial of the requested relief will cause both practical and economic hardship.

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. Indeed, no objections or concerns were voiced by the community, and the Petitioner is proposing to reconstruct and revitalize a moribund commercial site, which will greatly benefit the area.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by Petitioner, I find that Petitioner's variance request should be granted.

THEREFORE, IT IS ORDERED this 3rd day of February, 2011 by this Administrative Law Judge, that Petitioner's Variance request as follows:

- From Section 409.8.A.2 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to allow parking to occur on a gravel surface in lieu of the requirement to have a durable and dustless surface; and
- From Section 409.8.A.4 of the B.C.Z.R. to permit setbacks of as little as 6 feet from the public right of way for existing parking spaces in lieu of the required 10 feet

be and are hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for its building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appeal period has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. As discussed with Petitioner, any proposed development activities must meet all Chesapeake Bay Critical Area Regulations although that will be an issue that is revisited when Petitioner seeks development plan approval.

Any appeal of this decision must be filed within thirty (30) days of the date of this Order.

SIGNED
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:pz