

**IN RE: PETITION FOR VARIANCE**  
**(4800 Benson Avenue)**  
13<sup>th</sup> Election District  
1<sup>st</sup> Councilman District  
Bagel Shop, Inc.  
Petitioner

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BEFORE THE OFFICE  
OF ADMINISTRATIVE  
HEARINGS FOR  
BALTIMORE COUNTY  
**CASE NO. 2013-0188-A**

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**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Erin R. Guiffre, Esquire, on behalf of the legal owner of the subject property. The Petitioner is requesting Variance relief from Sections 255.1 and 238.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a 24 ft. x 30 ft. garage in the rear of a commercial lot with side setbacks of 10 ft. and 7 ft., 9 in. and a rear setback of 10 ft. in lieu of the required 30 ft., respectively. 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 2.

Appearing at the public hearing in support of the requests was Steven R. Garey and David L. Taylor, Jr., RLA, the landscape architect who prepared the site plan. Erin R. Guiffre, Esquire, appeared and represented the Petitioner. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

There were no substantive Zoning Advisory Committee (ZAC) comments received from any County reviewing agencies.

Testimony and evidence revealed that the subject property is approximately 0.16 acres and is zoned ML-IM. The Petitioner has for over eight years operated a landscape business at the site. The Petitioner would like to construct a garage on the premises to store seed, fertilizer and other

materials used in its business.

Based upon the testimony and evidence presented, I will grant the request for variance relief. Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People's Counsel*, 407 Md. 53, 80 (2008).

Petitioner has met this test. The property is rather small and narrow, and is surrounded by much larger industrially-zoned parcels. As such, it is unique for zoning purposes.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty, given that it would be unable to construct the garage to accommodate its growing business. 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. This is demonstrated by the lack of County opposition, and by the support of Petitioner's immediate neighbor. *See* Exhibit 3.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the variance relief requested shall be granted.

THEREFORE, IT IS ORDERED, this 15<sup>th</sup> day of April, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Sections 255.1 and 238.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a 24 ft. x 30 ft. garage in the rear of a commercial lot with side setbacks of 10 ft. and 7 ft., 9 in. and a rear setback of 10 ft. in lieu of the required 30 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for appropriate permits 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 appellate process from this Order 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.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB:dlw