

IN RE: PETITION FOR VARIANCE
(9654 Belair Road)
11th Election District
5th Councilman District
9654 Belair Road, Inc.
Petitioner

*
*
*
*
*

BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2013-0133-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by John B. Gontrum, Esquire on behalf of 9654 Belair Road, Inc., the legal owner of the subject property. The Variance was filed pursuant to Baltimore County Zoning Regulations (“B.C.Z.R”) as follows:

1. From Section 232.1 and Section 303.2 to permit a front building setback of 5' in lieu of the required 10' and 14.5' respectively.
2. From Section 232.3 to permit a rear yard of 2' in lieu of the required 20'.
3. From Section 409.4 to permit a one-way driving aisle of 9' in lieu of the required 12'.
4. From Section 409.6.A.2 to permit 76 available parking spaces in lieu of 189 spaces required.
5. From Section 409.8.A.4 to permit parking space setbacks of 0' and 5' from right of way lines in lieu of required 10'.
6. From Section 409.11 to permit no designated loading area.

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

Appearing at the public hearing in support of the requests was Rick Richardson, from Richardson Engineering, LLC, Andrea Conrad and Michael Lancelotta. John B. Gontrum, Esquire appeared as counsel 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 interested citizens in attendance and the file does not contain any letters of protest or opposition.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the record of this case. The Department of Planning noted its support for the project, and the Bureau of Development Plans Review indicated a landscape plan would be required prior to permit issuance.

Testimony and evidence revealed that the subject property is .77 acres and is zoned BL-AS. The property is in the Perry Hall area. The site is improved with (among other buildings) a restaurant that has fallen into disrepair. The Petitioner--who is making a large capital investment--proposes to completely renovate the restaurant as shown on the drawing admitted as Exhibit 4.

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. As shown on the site plan, the property is of irregular dimensions. In addition, the Petitioner must contend with existing site conditions and nonconforming setbacks, etc. As such, the property is unique. If relief were denied, the Petitioner would experience a practical difficulty, given that it would be unable to complete the project as planned, which will be a dramatic improvement to and investment in the neighborhood.

As noted, the great majority of the relief seeks to simply "legitimize" the existing site conditions. Although the parking variance seeks a significant reduction in the number of required

spaces, counsel noted that the Petitioner will be offering free valet parking, and has entered into a lease agreement (Exhibit 2) with a neighboring owner where cars can be parked. Counsel also indicated that the Petitioner hopes to enter into a similar lease for additional parking with a health food store across the street from the subject property, which closes each day no later than 5 p.m. Finally, the nearest residential street (Kahlston Road) is posted with “no parking” signs, and ten (10) residents living on that road submitted statements indicating they are “in support of (or do not oppose)...the parking variance.” Exhibit 5.

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 11th day of February, 2013 by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Baltimore County Zoning Regulations (“B.C.Z.R”) as follows:

1. From Section 232.1 and Section 303.2 to permit a front building setback of 5' in lieu of the required 10' and 14.5' respectively.
2. From Section 232.3 to permit a rear yard of 2' in lieu of the required 20'.
3. From Section 409.4 to permit a one-way driving aisle of 9' in lieu of the required 12'.
4. From Section 409.6.A.2 to permit 76 available parking spaces in lieu of 189 spaces required.
5. From Section 409.8.A.4 to permit parking space setbacks of 0' and 5' from right of way lines in lieu of required 10'.
6. From Section 409.11 to permit no designated loading area,

be and is hereby GRANTED.

The relief granted herein shall be conditioned upon and subject to the following:

1. The Petitioner may apply for any required permits and may be granted same upon receipt of this Order; however the Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason, this Order is reversed, the Petitioner will be required to return and be responsible for returning said property to its original condition.
2. A landscape plan must be submitted for approval by Baltimore County prior to the issuance of any permits.

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