

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(836 Middle River Road)		
15 th Election District	*	OF ADMINISTRATIVE
6 th Councilman District		
834 Middle River Road LLC;	*	HEARINGS FOR
Andrew Johns, Managing Member		
Legal Property Owner	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2013-0165-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Andrew Johns, Managing Member of 834 Middle River Road LLC, legal owner of the subject property. The Petitioner is requesting Variance relief from Section 409.6.A.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow parking for 34 spaces in lieu of the required 38 spaces. 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 public hearing in support of the requests was Andrew Johns on behalf of 834 Middle River Road LLC, and Patrick C. Richardson, Jr., with Richardson Engineering LLC, the professional engineer who prepared the site plan. 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 2.505 acres and is zoned BLR and DR 5.5. The site is improved with a commercial building containing a restaurant (Momma Rosa’s), and the Petitioner will soon open a small convenience store (880 sq. ft.) and

window repair shop (880 sq. ft.) on the premises. To do so requires variance relief concerning the number of parking spaces.

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 deep and narrow, and nearly 80% of the site is burdened by forest buffer and environmental constraints relating to a stream that runs through the property. Thus, the property is unique for zoning purposes. If the regulations were strictly enforced the Petitioner would experience a practical difficulty, given that it would need to acquire off site parking to satisfy the regulations.

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 or community opposition. In addition, the relief requested is extremely modest, and Petitioner noted that the restaurant has been in operation since 2009 and has never had any problems with the number of parking spaces.

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 18th day of March, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Section

409.6.A.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow parking for 34 spaces in lieu of the required 38 spaces, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for its 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.

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:sln