

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(2829 Eastern Blvd.)		
15 th Election District	*	OF ADMINISTRATIVE
6 th Councilman District		
Anthony K. & Ruthann K. Hardy,	*	HEARINGS FOR
<i>Legal Owners</i>		
Samuel Hammaker, <i>Contract Purchaser</i>	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2013-0211-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Anthony K. & Ruthann K. Hardy, the legal owners of the subject property. The Variance was filed pursuant to Baltimore County Zoning Regulations (“B.C.Z.R”) as follows: (1) to allow a 5 ft. side yard setback in lieu of the required 30 ft. setback in Section 238.2; (2) to allow a building (existing dwelling) to building (proposed phase one building) setback of 20 foot in lieu of the required 55 foot setback in Sections 238.1 and 238.2, and; (3) to allow 0 outside parking spaces in lieu of the required 3 outside parking spaces per Section 409 until the existing dwelling is razed. 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 Sam Hammaker, Wayne Kraus, Ruthann Hardy, Lynn Barranger and Bruce E. Doak with Bruce E. Doak Consulting, LLC, the firm that 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.

The only substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP), dated April 24, 2013, indicating that Petitioners must provide landscaping and similar amenities along the property boundaries. Mr. Doak indicated at the

hearing that he had not received a copy of the DOP's comment when he received the other ZAC comments from the county. Mr. Doak took issue with item numbers 2 and 5 on that comment. Item number 2 concerns a buffer along the western property boundary, which Mr. Doak stated would present a security concern to the Air National Guard, the adjoining owner. Item number 5 requested installation of a sidewalk along the Eastern Boulevard frontage of the site and Mr. Doak indicated his client does not own the land adjoining Eastern Boulevard. But in reviewing the exhibits in the file, the aerial photo (Exhibit 2) submitted by Petitioners would seem to indicate that Petitioners' property extends to the road frontage, even though the site plan shows otherwise. Based on the site plan (Exhibit 1), it is not clear what right the Petitioners claim to the existing paved driveway shown thereon.

Testimony and evidence revealed that the subject property is approximately 13,135 feet and is zoned MH and IM. The lot is narrow (71') and contains a vacant single family dwelling. The Petitioners propose to ultimately (in 2 phases) construct storage, office and retail structures on the property. The subject property is surrounded by industrial uses and adjoins the Martin State Airport. See Exhibit 2 (aerial photo).

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).

Petitioners have met this test. The lot here is one of the smallest in the vicinity, and it is also very narrow. In addition, the property is also the last in the vicinity to have a single family dwelling remaining on site, and it is thus unique for zoning purposes. If the B.C.Z.R. were strictly

enforced, the Petitioners would indeed suffer a practical difficulty, since they would be unable to construct the proposed improvements for their 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 support of the County and community.

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 13th day of May, 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) to allow a 5 ft. side yard setback in lieu of the required 30 ft. setback in Section 238.2; (2) to allow a building (existing dwelling) to building (proposed phase one building) setback of 20 foot in lieu of the required 55 foot setback in Sections 238.1 and 238.2, and; (3) to allow 0 outside parking spaces in lieu of the required 3 outside parking spaces per Section 409 until the existing dwelling is razed, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
- Petitioners must comply with the ZAC comments of DOP dated April 24, 2013, which are attached as an exhibit hereto. With respect to the vegetative screening along the western property boundary, such a requirement would be waived if Petitioners provide to the undersigned or the DOP written confirmation from the adjoining owner (at the Martin State Airport or National Guard facility) that installation of such a buffer would present a security risk or concern. Likewise, the requirement for a sidewalk along the Eastern Boulevard frontage of the site will be waived if Petitioners provide to the undersigned or the DOP proof they

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