

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(3920 Washington Blvd.)		
13 th Election District	*	OF ADMINISTRATIVE
1 st Councilman District		
Southside Oil, LLC	*	HEARINGS FOR
<i>Legal Owners</i>		
Zone 27 LLC, <i>Contract Purchaser</i>	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2014-0067-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 the legal owners, Southside Oil, LLC, and contract purchaser, Zone 27, LLC (“Petitioners”). The Variance was filed pursuant to Baltimore County Zoning Regulations (“B.C.Z.R”) §238.2 to permit a side yard setback of 11 feet in lieu of the required 30 feet and a rear yard setback of 5 feet in lieu of the required 30 feet. 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 Ira and Yasmin Geller, on behalf of the contract purchaser. John B. Gontrum, Esquire appeared as counsel and represented the Petitioners. The file reveals that the Petition was advertised and posted as required by the Baltimore County Zoning Regulations. There were no Protestants in attendance, and the file does not contain any letters of protest or opposition.

Zoning Advisory Committee (ZAC) comments were received from Maryland Department of Transportation, State Highway Administration (SHA) dated September 24, 2013, Bureau of Development Plans Review (DPR) dated September 24, 2013, and the Department of Planning (DOP) dated October 18, 2013.

Testimony and evidence revealed that the subject property is approximately 1.05 +/- acres and zoned BR-AS. The property was formerly used as a gasoline station and convenience store, pursuant to prior zoning approvals. The site was sold recently, and all improvements were demolished, leaving a vacant site. Petitioners propose to construct a small (approximately 8,000 SF) one-story retail/commercial building on the property, but to do so requires variance relief.

Based upon the testimony and evidence presented, I will grant the petition for variance.

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 topography changes throughout the property and an existing easement through the center of the site further constrains the available building envelope. As such, the property is unique.

If the B.C.Z.R. were strictly interpreted the Petitioners would indeed suffer a practical difficulty, since they would be unable to construct the proposed building on the property. 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.

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 12th day of December, 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") §238.2 to permit a side yard setback of 11

feet in lieu of the required 30 feet and a rear yard setback of 5 feet in lieu of the required 30 feet, 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 the DOP, dated October 18, 2013.

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