

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(6760 Graceland Avenue)</b>		
12 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
7 <sup>th</sup> Councilman District		
Louis & Mary Simmons, <i>Owners</i>	*	HEARINGS FOR
C & D's Installers, Inc.,		
<i>Contract Purchasers</i>	*	BALTIMORE COUNTY
Petitioners		
	*	<b>CASE NO. 2014-0142-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Timothy M. Kotroco, Esq., on behalf of Louis & Mary Simmons, legal owners and C & D's Installers, Inc., contract purchaser ("Petitioners"). The Petitioners are requesting variance relief from Sections 232.2 and 232.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit side yard setbacks of five (5) ft. in lieu of the required ten (10) ft. and a rear yard setback of three (3) feet in lieu of the required twenty (20) 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 Daniel Blevins. Timothy M. Kotroco, Esq., with Whiteford, Taylor & Preston, 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 opposition.

There were no Zoning Advisory Committee (ZAC) comments received.

Testimony and evidence revealed that the subject property is approximately 0.14 acres and is zoned BL. The Petitioner has for over 30 years operated a pool installation company at the

site, pursuant to a lease agreement with Mr. Simmons, the owner. Petitioner is planning to purchase the property, and requires variance relief to replace a dilapidated shed at the rear of the site, and validate the deficient side yard setbacks on the existing 1 story office building (which of course would be a “nonconforming” structure) shown on the plan, which was constructed in 1965.

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 property is constrained by long-existing site conditions, and is therefore unique.

If the B.C.Z.R. were strictly interpreted, the Petitioners would indeed suffer a practical difficulty, given they would be unable to retain the existing office building or rebuild the dilapidated shed. 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 community and/or county agency opposition.

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 24<sup>th</sup> day of February, 2014, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Sections 232.2 and 232.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit side yard setbacks of five (5) ft. in lieu of the required ten (10) ft. and a rear yard setback of three (3) feet in

lieu of the required twenty (20) 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.

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:sln