

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(2747 North Rolling Road)</b>		
2 <sup>nd</sup> Election District	*	OF ADMINISTRATIVE
4 <sup>th</sup> Councilman District		
Rutherford Windsor, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	<b>CASE NO. 2014-0133-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 David H. Karceski, Esquire, of Venable, LLP on behalf of the legal owner, Rutherford Windsor, LLC, Petitioner. The Variance was filed pursuant to Baltimore County Zoning Regulations (“B.C.Z.R”) as follows: (1) to allow side yard setbacks a minimum of 10 and 12 ft. in lieu of the required 50 ft. within 100 ft. of the right-of-way of a street abutting a residential zone boundary and from §§ 255 and 238 and the required 30 ft. outside of 100 ft. of the right-of-way of a street abutting a residential zone boundary; and (2) to allow a rear yard setback a minimum of 9 ft. in lieu of the required 30 ft. 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 Alex Watkins and landscape architect Bernt Petersen. David H. Karceski, Esquire with Venable, LLP, appeared as counsel and represented the Petitioner. The file reveals that the Petition was advertised and posted as required by the Baltimore County Zoning Regulations.

The only substantive Zoning Advisory Committee (ZAC) comments were received from Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). Both

agencies requested that landscaping be provided, and the DOP also suggested that the west-facing elevation (which faces the residential zone) of the proposed storage building be designed with architectural features.

Testimony and evidence revealed that the subject property is approximately 0.7 acres; it is the smallest lot within a 160+/- acre industrial park. The property is zoned ML-IM, and adjoins a residential zone, which triggers certain setback requirements found in the BCZR. The Petitioner currently operates a large self-storage facility on the adjoining property, and proposes to construct another building on this lot to meet the demand for storage space. To do so requires zoning 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).

Petitioner has met this test. As noted above, this is a small lot (less than 1 acre) within a 160+/- acre industrial park, and in order for the property to be used in a fashion that is compatible with adjoining uses, variance relief is necessary given the increased setbacks imposed by the BCZR. In addition, the property is irregularly shaped as shown on the site plan. For these reasons, I find that the property is unique.

If the B.C.Z.R. were strictly interpreted the Petitioner would indeed suffer a practical difficulty, since it would be unable to construct the proposed building. 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 absence of County and/or community 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 January, 2014, 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 side yard setbacks a minimum of 10 and 12 ft. in lieu of the required 50 ft. within 100 ft. of the right-of-way of a street abutting a residential zone boundary and from §§ 255 and 238 and the required 30 ft. outside of 100 ft. of the right-of-way of a street abutting a residential zone boundary; and (2) to allow a rear yard setback a minimum of 9 ft. in lieu of the required 30 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. 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.
2. Petitioner must submit for approval by the County’s landscape architect a plan showing landscaping along the Rolling Road frontage of the site.
3. Petitioner must submit for approval by the Department of Planning a plan showing the architectural features which will be included on the west-facing elevation of the proposed building.

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