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| IN RE: PETITION FOR VARIANCE | * | BEFORE THE OFFICE |
| (12102 Belair Road) | | |
| 11 th Election District | * | OF ADMINISTRATIVE |
| 3 rd Councilman District | | |
| Wayne W. Davis, <i>Legal Owner</i> | * | HEARINGS FOR |
| Ms. Patricia Johns, <i>Lessee</i> | | |
| Petitioners | * | BALTIMORE COUNTY |
| | * | CASE NO. 2014-0175-A |

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Rick Richardson on behalf of Wayne W. Davis, legal owner and Ms. Patricia Johns, lessee (“Petitioners”). The Petitioners are requesting variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.), as follows: (1) to permit a side yard setback of 0 ft. in lieu of the required 15 ft.; and (2) to permit a rear yard setback of 12 ft. in lieu of the required 15 ft. The petition as filed sought three (3) additional variances, although those requests were dismissed by counsel at the outset of the hearing. 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 Wayne Davis, Stacy and Patricia Johns and Rick Richardson, P.E., from Richardson Engineering, LLC, the firm that prepared the site plan. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Several members of the community attended the hearing and opposed the request.

Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) dated March 31, 2014, and the Bureau of Development Plans Review (DPR)

dated March 20, 2014. The Petitioners have agreed to comply with the landscaping and signage requirements of the BCZR and Landscape Manual, and have eliminated the variance requests pertaining to those items. As such, the concerns raised by the DOP and DPR have been addressed.

The subject property is approximately 1.44 ± acres and is zoned BM-CR. Mr. Davis has owned the property since 1975, and there are a variety of uses on the site, including commercial/retail uses and apartments/mobile home residential uses. The variances pertain to rear and side yard setbacks, and the deficiencies are existing on site. The Petitioners propose no new construction or improvements; the variances are to legitimize existing conditions.

Petitioners' counsel argued this case does not concern the uses that exist on the property, and I concur. This is not a petition for special hearing to determine whether the trailers, mobile homes, apartments and/or motel units (broadly speaking) are lawful nonconforming uses on the site. The community expressed some concern about the proposed fortune telling business which would occupy the existing commercial building. Even so, this use is permitted as of right in the BM zone, and special exception relief is not required. Also, since the use is permitted in the underlying BM zone, the Regulations provide that it is also permitted in the CR (commercial, rural) overlay District, per B.C.Z.R. §259.3.A. Mr. Richardson, who was accepted as an expert, confirmed that Petitioners satisfied the bulk regulations of BCZR § 259.3.C.1. For this reason, I do not believe Petitioners must show the use is "needed" in the rural area per B.C.Z.R. §259.2, as Mr. Zimmerman contends in his April 22, 2014 correspondence, a copy of which is included in the case file.

Just the same, I believe Mr. Zimmerman raises several good points, including whether the proposed use in this case would constitute a change sufficient to terminate the nonconforming use status arguably enjoyed by the residential units on site. In addition, members of the community

expressed concern about the well and septic systems on site, as well as the 12 dwelling units on the relatively small (approximately 1.4 acres) lot. These are all valid concerns, but are not within the scope of this variance case.

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 L-shaped, and wraps around an adjoining commercial use (pool store). As such, it is unique. If the B.C.Z.R. were strictly interpreted, the Petitioners would suffer a practical difficulty, given they would be required to relocate or raze an existing 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.

THEREFORE, IT IS ORDERED, this 11th day of June, 2014, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief as follows: (1) to permit a side yard setback of 0 ft. in lieu of the required 15 ft.; and (2) to permit a rear yard setback of 12 ft. in lieu of the required 15 ft., 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.

____ Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:sln