

IN RE: PETITION FOR VARIANCE
(106 Mt. Carmel Road)
7th Election District
3rd Councilman District
Joseph P. Dwyer
Petitioner

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BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2014-0194-A

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Joseph P. Dwyer, the legal owner of the subject property. The Petitioner is requesting variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: (1) to permit zero additional landscaping in lieu of the required landscaping in the front, side and rear setbacks per §259.3.C.a; (2) to permit 0% of the parking lot to be pervious in lieu of the required 7% per §259.3.C.3.b; (3) to permit zero trees to be planted in lieu of the required one per eight parking spaces per §259.3.C.3.b; (4) to permit the existing parking lot not to be accessible from adjacent non-residential uses and zones per §259.4; and (5) to permit a two-way access driveway to have a width of 12 feet in lieu of the required 20 feet per §409.4.A. 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 request was Joseph and Deborah Dwyer, Robert Applebaum and Bruce E. Doak, from Bruce E. Doak Consulting, the firm that prepared the site plan. The Petition was advertised and posted as required by the B.C.Z.R. There were no Protestants in attendance and the file does not contain any letters of opposition. In fact, both of the adjoining neighbors support the Petition.

Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) dated April 23, 2014 and the Bureau of Development Plans Review (DPR) dated April 9, 2014. Testimony and evidence revealed that the subject property is approximately .615 acres and is zoned RC-5 with a CR district overlay.

The Petitioner has operated a hair salon in the Monkton area for over 20 years. She would like to move her business to this new location, which use is permitted as of right in the CR district. However, the existing driveway and parking lot at the subject property - - which is a single family dwelling converted to commercial use - - does not comply with the B.C.Z.R., and the Petitioner therefore sought 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).

Petitioner has met this test. As seen on the site plan, the property is of irregular dimensions and it is therefore unique. If the B.C.Z.R. were strictly interpreted, the Petitioner would suffer a practical difficulty, given he would be forced to incur great expense to construct improvements that would be of marginal utility. In fact, both the Petitioner and Dr. Applebaum (whose dental office is adjacent to the subject property) noted that the enlarged driveway and parking lot requirements would make the property look and feel "commercial," which would be antithetical to the goals of the Hereford Community Plan. 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 both the neighboring owners and the community. See Petitioner's Exhibit Nos. 6 & 7.

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 28th day of May, 2014, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: (1) to permit zero additional landscaping in lieu of the required landscaping in the front, side and rear setbacks per §259.3.C.a; (2) to permit 0% of the parking lot to be previous in lieu of the required 7% per §259.3.C.3.b; (3) to permit zero trees to be planted in lieu of the required one per eight parking spaces per §259.3.C.3.b; (4) to permit the existing parking lot not to be accessible from adjacent non-residential uses and zones per §259.4; and (5) to permit a two-way access driveway to have a width of 12 feet in lieu of the required 20 feet per §409.4.A, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
- Petitioner must comply with the requirements of the Baltimore County Landscape Manual, as determined by Jeanette Tansey, R.L.A.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JEB:sln

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County