

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(Eastern Blvd.)		
15 th Election District	*	OF ADMINISTRATIVE
7 th Councilman District		
Michael & Athena Lakis	*	HEARINGS FOR
<i>Legal Owners</i>		
Kingsville Holdings, LLC,	*	BALTIMORE COUNTY
<i>Contract Purchaser</i>		
Petitioners	*	CASE NO. 2014-0050-A

* * * * *

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 owners, Michael & Athena Lakis, and contract purchaser, Kingsville Holdings, LLC (“Petitioners”). Variance relief is sought pursuant to Baltimore County Zoning Regulations (“B.C.Z.R”) §409.6.A.2, to allow 34 off-street parking spaces in lieu of the minimum required 46 parking spaces. 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 Lee Engle, Rick Richardson, Kirk Salvo and Richard Klemkowski. David H. Karceski, Esquire with Venable, LLP, appeared as counsel and represented the Petitioners. There were no Protestants or interested citizens in attendance, and the file does not contain any letters of protest or opposition. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), and the State Highway Administration (SHA).

Testimony and evidence revealed that the subject property is approximately 0.804 +/-

acres and is zoned BL-CCC. The site is improved with a large one story building that formerly housed a tavern. The building has been vacant for a year or more and the Petitioners propose to construct an addition onto the existing structure, along with an improved façade, and open a Dollar General store at the location. 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 property is irregularly shaped and adjoins a small parcel on which is erected a World War II memorial. These factors, along with the wide driveway opening required for truck access from Eastern Boulevard, render the site 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 improvements. 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.

In its ZAC comment, the DOP proposed three conditions to be imposed in any final order granting relief. The Petitioners have agreed to construct the curb, gutter and sidewalk improvements referenced in the comment, and the Design Review Panel, which approved the project by letter dated November 18, 2013, did not impose any additional conditions. But the Petitioners believe that the condition regarding paving of the alley is inappropriate, and I agree. Counsel noted that the Petitioners do not own or claim any interest in the alley behind the site, and Mr. Karceski presented a deed to this effect. In these circumstances, I do not believe that I

would be authorized (even if I were so inclined) to order the Petitioners to make improvements to property they do not own.

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 20th day of November, 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”) § 409.6.A.2 to allow 34 off-street parking spaces in lieu of the minimum required 46 parking spaces, 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 complete at their own expense the curb, gutter and sidewalk improvements referenced in the DOP’s ZAC comment dated October 1, 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