

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(630 Eastern Ave.)		
15 th Election District	*	OF ADMINISTRATIVE
7 th Councilman District		
William and Stacey DeCarlo	*	HEARINGS FOR
<i>Legal Owners</i>		
Petitioners	*	BALTIMORE COUNTY
	*	CASE NO. 2014-0003-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by William and Stacey DeCarlo, the legal owners of the subject property. The Petitioners are requesting Variance relief from Section 409.6.A.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit six parking spaces for an office in lieu of the required 15 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 William and Stacey DeCarlo, Bob Infussi and Art Leonard. The file reveals that the Petition was properly advertised and posted as required by the Baltimore County Zoning Regulations. There were no Protestants or interested citizens in attendance, although the file contains a letter from the Office of People's Counsel (dated 8-8-13) expressing concerns about the petition.

The only substantive Zoning Advisory Committee (ZAC) comment received was from the Department of Environmental Protection and Sustainability (DEPS) which indicated Petitioners must comply with Critical Area Regulations.

Testimony and evidence revealed that the subject property is approximately 7,250 square feet and is zoned BL-AS. The property is improved with a single family dwelling that was

constructed in 1950 (approximately 1,600 square feet). In or about 2008, the Petitioners constructed improvements to the property, increasing to 4,324 square feet the area of the enclosed buildings. The Petitioners have operated on the premises since 2000 a computer drafting company known as “Commercial CAD, Inc.” The Petitioners received a code enforcement notice from Baltimore County concerning the construction activities which were conducted without valid permits.

Mr. DeCarlo testified that he has 15 employees, and that his clients do not visit the premises, but receive their work product (drawings, etc.) via the internet. Arthur Leonard, a professional engineer accepted as an expert, testified that there are six parking spaces on site used by employees, and that between 6-9 vehicles are parked out front on Eastern Avenue or in the Wells Fargo Bank lot pursuant to a longstanding “gentleman’s agreement.” Exhibit 1.

Mr. DeCarlo testified this has been the arrangement for over 10 years, and that he has never received any complaints or comments from his neighbors. The Petitioner also testified that his employees (or customers) have never parked on either Stuart Street or Dorsey Avenue, contrary to the assertion in Mr. Zimmerman’s letter. The Petitioner also presented a page from an Order in Case # 76-80-SPH, which he said granted to Wells Fargo’s predecessor the right of off street commercial parking in a residential zone, and that it is these spaces which the Petitioner uses for his employees.

I reviewed closely the letter submitted by Mr. Zimmerman, as well as the email from Steven Weber dated 9-3-2013, and I agree with many of the concerns he has identified. The Petitioner admitted it was improper to construct the improvements without a permit, and he stated that he received “bad advice” from his consultants at the time. In any event, the code violation case plays no role in the instant proceeding, and even if relief is granted regarding the parking

requirements, the Petitioner will still need to address the building permit issues with the Department of Permits Approvals and Inspections (PAI).

But focusing on the parking, I do not believe that the variance relief would create the negative impacts envisioned by Messrs. Zimmerman and Weber. As noted above, the Petitioner indicated he has had 15 employees for over a decade, and that his business has been functioning in the same fashion for that period of time. Yet during this time there is no indication that residents or business owners in the area were ever inconvenienced or negatively impacted by overflow parking from this site. Mr. Infussi stated that he was trying to “formalize” the shared parking arrangement with the bank next door, although he stated that the Petitioners have for years had permission to park on the bank lot. The Petitioners have an innovative and thriving business at the site, and it does not appear that the community has been adversely impacted by its operations. In addition, the Petitioners presented a letter of support from the Essex Middle River Renaissance Corporation, noting that the Petitioners operate a “low impact type of business” that has attracted jobs to the area. Exhibit #5.

Based upon the testimony and evidence presented, I will grant the request for variance relief, although as an express condition precedent to such relief the Petitioners will be required to obtain from the adjoining property owner permission to park on a daily basis (Monday-Friday) up to six (6) passenger vehicles. Although such an arrangement apparently has existed for years as a “gentlemen’s agreement,” the ownership or occupancy of that property could change, and the Petitioners would then need to have their employees park on nearby public roadways. To ensure “continued future availability” of these spaces, the Petitioners must obtain from that owner a binding contractual agreement or lease. B.C.Z.R. §409.7.C. Under *Cromwell* and its progeny, 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 commercially zoned, yet it is surrounded by residentially zoned and used properties. It is therefore unique.

If the B.C.Z.R. were strictly enforced, the Petitioners would indeed suffer a practical difficulty, given they would be unable to continue operating their business at the site. 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 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 5th day of September, 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") to permit six parking spaces for an office in lieu of the required 15 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 its 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 obtain within six (6) months of the date of this Order, and provide to the County's Department of Permits Approvals and Inspections (PAI), written permission (in the form of a contract or lease) for parking up to six (6) passenger vehicles on a daily basis (Monday-Friday) on the adjoining premises owned by Signet Bank, as shown on the site plan marked as Exhibit 1.

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