

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(9523 Pulaski Highway)</b>		
15 <sup>h</sup> Election District	*	OF ADMINISTRATIVE
6 <sup>th</sup> Council District		
9523 Pulaski Highway, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
Primax Properties, LLC	*	BALTIMORE COUNTY
<i>Contract Purchaser</i>		
Petitioners	*	<b>CASE NO. 2015-0167-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance on behalf of 9523 Pulaski Highway, LLC, legal owner and Primax Properties, LLC, contract purchaser (“Petitioners”). The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §§409.6.A.2, 303.2 and 238.2. as follows: (1) to permit 33 parking spaces in lieu of the required 35 parking spaces; (2) to allow a front yard setback of 10 feet in lieu of the required front yard average of 69 feet; and (3) to allow a side yard setback of 6 feet in lieu of the required 30 feet. A site plan was marked and admitted as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the request was Chris Neill and Rick Richardson, a licensed professional engineer whose firm prepared the plan. John B. Gontrum, Esq. appeared and represented the Petitioners. No Protestants or interested citizens were in attendance. The Petition was advertised and posted as required by the B.C.Z.R. A substantive Zoning Advisory Committee (ZAC) comment was received from the Bureau of Development Plans Review (DPR).

The subject property is approximately 65,320 square feet and is zoned BR-AS, BR and ML-AS. The property is unimproved, and has a lengthy zoning history which reveals that both

variance and special exception relief have been granted previously, though the improvements (i.e., office building and car wash) proposed in those earlier cases were never constructed. At present, the contract purchaser proposes to construct an Advance Auto Parts store at the site, but requires zoning relief to do so.

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 site is irregularly shaped and is therefore unique. In addition the property was found to be unique in three prior zoning cases from 1965, 1977 & 1996. Petitioners would experience a practical difficulty if the regulations were strictly interpreted, since they would be unable to construct the new store at the site. 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.

As noted earlier, the Bureau of Development Plans Review (DPR) submitted a ZAC comment. That agency indicated that the width of the entrance/exit from the site onto Middle River Road must be enlarged to 24', and the Order which follows will contain such a condition. In addition, DPR noted a landscape plan is required prior to issuance of permits.

THEREFORE, IT IS ORDERED, this 10<sup>th</sup> day of April, 2015, 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) §§409.6.A.2, 303.2 and 238.2. as follows: (1) to permit 33 parking spaces in lieu of the required 35 parking spaces; (2) to allow a front yard setback of 10 feet in lieu of the required front yard average of 69 feet; and (3) to allow a side yard setback

of 6 feet in lieu of the required 30 feet, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. Petitioners must revise the site plan prior to issuance of permits to show a 24 ft. wide entrance/exit onto Middle River Road.
3. Petitioners must submit for approval a landscape plan prior to issuance of permits.

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

JEB:sln

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County