

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(7704 German Hill Road)		
12 th Election District	*	OF ADMINISTRATIVE
7 th Councilman District		
William R. & Kathleen M. Bacon	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	CASE NO. 2014-0264-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance on behalf of the legal owners of the subject property. The Petitioners are requesting variance relief from the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows: (1) to allow 7 parking spaces in the commercial area of the subject property in lieu of the required 10 parking spaces pursuant to § 409.6.A.2; (2) to allow a two-way movement driveway with a width of 9 ft. in lieu of the required 20 ft. pursuant to § 409.4.A; and (3) to require no additional landscaping around the proposed commercial parking area in lieu of the required landscaping pursuant to § 409.8.A.1. 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 request was William R. Bacon. Bruce E. Doak from Bruce E. Doak Consulting, LLC appeared on behalf of the Petitioners. A neighbor (James Green) attended the hearing to obtain more information about the requests. The Petition was advertised and posted as required by the B.C.Z.R.

Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) dated June 27, 2014, and from the Bureau of Development Plans

Review (DPR) dated June 26, 2014.

The subject property is approximately 10,441 sq. ft. and is zoned BL-AS & DR 3.5. Mr. Bacon, who is an attorney, has an interest in collecting large and unique antique items, such as mantle pieces or bars. He would like to construct a small accessory building (garage) at the rear of his property for the purpose of storing and selling the antiques, by appointment only. The property is currently improved with a small single family dwelling facing German Hill Road, and the proposed garage (1,920 sq. ft.) would be located at the rear of the narrow lot and would be accessed by way of an existing concrete drive.

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 narrow and extremely deep (50' x 216'), and is split zoned for commercial and residential use. 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 unable to construct the proposed antique shop. I also 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. Mr. Green, whose property adjoins the rear of Petitioners' lot, did not object to the requests, but simply wanted additional details regarding the proposal.

ZAC Comments

I will impose as conditions on the relief granted those items recommended in the ZAC comments, with a few exceptions. Both the DOP and DPR requested a landscape and lighting

plan, which I do not believe is required. The photos submitted (Exhibit 4) show that the rear of the property is enclosed by mature vegetation, a point Mr. Green confirmed. As such, I do not believe that further landscaping is required. The DOP also requested that the variance be valid for this Petitioner only, which is at odds with Maryland law holding that variances “run with the land.” The final issue concerns Mr. Kennedy’s comment regarding the width of the driveway; he indicated the proposed driveway to access the garage/antique shop must be 16’ wide, instead of 9’ as proposed, to allow for two cars to pass. But as noted earlier, the sales of antiques will be by appointment only, which means it would be unlikely in the extreme for two cars to need to pass on this driveway. In addition, widening the driveway would in my opinion impart a decidedly commercial feel to the property, which would not be in keeping with adjoining residential properties.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the petition for variance relief shall be granted.

THEREFORE, IT IS ORDERED, this 6th day of August, 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 allow 7 parking spaces in the commercial area of the subject property in lieu of the required 10 parking spaces pursuant to § 409.6.A.2; (2) to allow a two-way movement driveway with a width of 9 ft. in lieu of the required 20 ft. pursuant to § 409.4.A; and (3) to require no additional landscaping around the proposed commercial parking area in lieu of the required landscaping pursuant to § 409.8.A.1, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. 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.
2. The Petitioners shall submit elevation drawings of the proposed garage to the DOP for review and approval prior to issuance of any building permits.
3. Retail sales will be conducted on the premises by appointment only.
4. No enterprise signs shall be erected on the premises.
5. The accessory building shall not be used as a residence, dwelling, or living quarters, and shall not have kitchen facilities or similar accommodations for overnight habitation.

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

JEB:dlw

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County