

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(4445 Old Court Road)		
2 nd Election District	*	OF ADMINISTRATIVE
2 nd Council District		
Talmudical Academy of Baltimore, Inc.	*	HEARINGS FOR
Petitioner		
	*	BALTIMORE COUNTY
	*	CASE NO. 2015-0104-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 owner of the subject property. The Petitioner is requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §§1B01.1.B.1, 504.2 and 1B01.2.C.1.a as follows: (1) to permit a 0 ft. Residential Transition Area (RTA) buffer in lieu of the required 50 ft. buffer and a residential transition area building setback of 17 ft. in lieu of the required 75 ft. setback; (2) to allow a maximum building length for non-residential principal buildings of 450 ft. in lieu of the maximum permitted 200 ft.; and (3) to permit non-residential principal buildings to have a 20 ft. interior side yard setback in lieu of the required 40 ft. setback (20 ft. for each building). A redline site plan for the project was marked and accepted into evidence as Petitioner’s Exhibit #1.

The president of Talmudical Academy and several neighbors (whose names are reflected on the sign-in sheet) attended the public hearing in support of the requests. Christopher Mudd, Esquire, represented the Petitioner. There were no Protestants in attendance. The Petition was advertised and posted as required by the B.C.Z.R. Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). These will be discussed below.

The subject property is approximately 11.6 acres and is zoned DR 5.5. The Talmudical Academy has for over 40 years operated on the site and as counsel explained it is in fact an integral part of the Scotts Hill neighborhood. The school population is growing and Petitioner would like to reconfigure the campus, which will include the construction of pre-school and high school buildings. Given the unusual configuration of the property and its juxtaposition to nearby single family homes, variance relief is needed.

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. The large site is irregularly shaped and is sandwiched between the Beltway and Old Court Road. As such it is unique. If the B.C.Z.R. were strictly interpreted, the Petitioner would suffer a practical difficulty, given it would be unable to construct the proposed improvements. 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 county and/or community opposition.

In its original ZAC comment dated November 21, 2014, DPR objected to the requested variances. Following receipt of this comment Petitioner and its consultants made significant revisions to the site plan and the County's landscape architect has now indicated she has "no objection to the requested variances being approved." Petitioner's Exhibit #13.

The DOP also submitted a lengthy ZAC comment, and indicated that the Petitioner met with staff from that agency to discuss landscaping and architectural issues. Following that

meeting, the site plan was revised to (among other things) reduce the height of proposed retaining walls and relocate away from the adjoining homes the storm water management facilities. The DOP indicated it does not oppose the requested variances, but its comment identified four proposed conditions upon its approval. Those will be included in the Order which follows.

THEREFORE, IT IS ORDERED, this 12th day of January, 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.”) §§1B01.1.B.1, 504.2 and 1B01.2.C.1.a as follows: (1) to permit a 0 ft. Residential Transition Area (RTA) buffer in lieu of the required 50 ft. buffer and a residential transition area building setback of 17 ft. in lieu of the required 75 ft. setback; (2) to allow a maximum building length for non-residential principal buildings of 450 ft. in lieu of the maximum permitted 200 ft.; and (3) to permit non-residential principal buildings to have a 20 ft. interior side yard setback in lieu of the required 40 ft. setback (20 ft. for each building), be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its 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. Petitioner must comply with the four conditions set forth in the DOP ZAC comment dated January 2, 2015, which is attached hereto and is expressly incorporated herein.

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