

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(305 E. Joppa Road)		
9 th Election District	*	OF ADMINISTRATIVE
5 th Council District		
TABCO Towers Associates, LLLP	*	HEARINGS FOR
Petitioner		
	*	BALTIMORE COUNTY
	*	CASE NO. 2015-0040-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.) §409.6 to allow for 72 on-site parking spaces in lieu of the 100 parking spaces allowed per April 11, 1975 Circuit Court Order. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the request was Steven Collins and Aaron Kensinger, Professional Engineer, whose firm prepared the plan. Susan McNicholas, who resides in the property, attended the hearing to obtain additional information regarding the request. Edward J. Gilliss, Esquire, represented the Petitioner. 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 October 16, 2014. That agency indicated it had no objection to the request.

The subject property is approximately 0.960 acres and is zoned BM-CT. The property is improved with a multi-story residential building known as Tabco Towers, which is located just

off of the traffic circle in downtown Towson. The tower was constructed in 1975, and provides housing for retired teachers and the elderly. The Petitioner obtained in 1975 variance relief from the Zoning Commissioner, allowing 100 parking spaces in lieu of the required 200 spaces. This was upheld by Circuit Court Order dated April 11, 1975, and the building has for nearly 40 years operated with this number of parking spaces. As noted by the DOP, there have been no complaints or concerns raised about the parking at Tabco Towers, and the Town-Center district zoning overlay encourages high density residential uses.

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. As an initial matter, the earlier zoning Order (No. 75-17-A) granting variance relief--upon a finding that Petitioner satisfied the legal requirements--would be entitled to preclusive effect under *res judicata*. But even if that were not the case, Mr. Kensinger testified (via proffer) as to the unique aspects of the site (including the irregular shape of the lot), and it is apparent Petitioner would experience a practical difficulty if the regulations were strictly interpreted, since there is absolutely no additional space on the lot or on neighboring properties that would allow for additional parking. I also believe the relief will not negatively impact the health, safety and welfare of the community.

THEREFORE, IT IS ORDERED, this 21st day of October, 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.") to allow for 72 on-site parking spaces in lieu of the 100 parking spaces allowed per April 11, 1975 Circuit Court Order, be and is hereby

GRANTED.

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