

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(8890 McDonough Road)		
2 nd Election District	*	OF ADMINISTRATIVE
4 th Council District		
Scott Development, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
Sprint	*	BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	CASE NO. 2015-0292-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 Scott Development, LLC, legal owner, and Sprint, lessee (“Petitioners”). The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §§426.6.A.2 & 209.4.C to permit a proposed equipment cabinet with a setback of 28.25 ft. in lieu of the required 50 ft. A site plan was marked and admitted as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the request was Randall Holmes. Randall G. Hurst, Esq. appeared on behalf of the Petitioners. 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) dated June 25, 2015, and a condition will be included in the Order below to address that agency’s concern.

The cell tower compound is 3,734 square feet and is located within a 7.85 acre parcel zoned O.T. The County’s Tower Review Committee (“TRC”) approved the location of the cell tower on April 28, 2015. Counsel noted that to comply with the 200’ setback requirement in the B.C.Z.R. (from a residential zone), the tower was shifted on the site such that the equipment cabinet (an 8’ high structure enclosed by a board-on-board fence, and screened in accordance with the Landscape

Manual) was situated 28.25 ft. from the property boundary. The regulation requires a 50 ft. setback, and thus the zoning petition was filed.

To obtain variance relief (as provided for in B.C.Z.R. §307) 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 of irregular dimensions and is triangular in shape. It is therefore unique. Petitioners would experience a practical difficulty if the regulations were strictly interpreted, since they would be unable to construct the cell tower as planned. 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 agency and/or community opposition, and the approval of the TRC.

THEREFORE, IT IS ORDERED, this 2nd day of September, 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) §§426.6.A.2 & 209.4.C to permit a proposed equipment housing structure with a setback of 28.25 ft. in lieu of the required 50 ft., 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, Petitioners would be required to return the subject property to its original condition.

2. Petitioners must obtain from Baltimore County the necessary written approvals to access the site via County-owned property. To initiate the approval process Petitioners shall within 15 days of the date hereof contact Dennis Kennedy, Supervisor of the Bureau of Development Plans Review; 410-887-3751 or dkennedy@baltimorecountymd.gov.
3. Petitioners shall within 15 days of the date hereof submit a redline Title Sheet of the site plan (sheet No. 1 of 7 only) with the correct Council District (i.e., 4th District) identified in the "Site Information" section.

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