

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(9716 Belair Road)		
11 th Election District	*	OF ADMINISTRATIVE
5 th Council District		
JB Sommer, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2016-0199-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 JB Sommer, LLC, legal owner of the subject property (“Petitioner”). Petitioner is requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §409.6.A.4 to allow 19 parking spaces in lieu of the required 58 spaces. A site plan was marked as Petitioner’s Exhibit 1.

John B. Sommer and professional engineer Rick Richardson from Richardson Engineering, LLC appeared in support of the Petition. There were no protestants or interested citizens 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 Department of Planning (DOP) and the Bureau of Development Plans Review (DPR). A condition will be included in the Order below to address these comments.

The subject property is 1.24 acres and zoned BL. The property is improved with a one-story commercial building (9,846 sq. ft.), and Petitioner proposes to construct an addition (1,750 sq. ft.) to accommodate his growing business. Mr. Sommer explained his company (“Time Out for Sports”) provides uniforms and other apparel to schools, recreation councils and similar entities. He also testified the business has very few walk-in customers (i.e., 2-3 visitors/daily)

since most transactions take place on the phone or internet.

In response to the ZAC comment submitted by the DOP, Mr. Richardson prepared a redline site plan (Ex. 2) which shows the proposed addition will be set back an additional 2 feet from the façade of the existing structure, and a condition will be included requiring landscaping to be provided in this “indentation.” The redline site plan also “shifts” the off-street parking spaces so that it is clear a 5 ft. setback (in lieu of the required 10 ft., as permitted by the variance granted in Case No. 2010-199-A) from the public right-of-way is maintained, an issue that was raised by DPR in its ZAC comment. The DPR also suggested landscaping be provided to screen the existing parking, although after reviewing photos and aerial imagery of the site I fear that doing so could create visibility issues for motorists at this ingress/egress point along Belair Road.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

Petitioner has met this test. The property is triangular in shape and a large portion of the site is constrained by environmental easements. As such the property is unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because it would be unable to construct the proposed addition. Finally, 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.

THEREFORE, IT IS ORDERED, this 9th day of **May**, **2016**, 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.4 to allow 19 parking spaces in lieu of the required 58 spaces, 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. Prior to issuance of permits Petitioner must submit for approval by the DOP elevation drawings of the proposed addition.
3. Prior to issuance of permits Petitioner must submit to Baltimore County a landscape plan showing landscaping to be provided in the area of the indentation along the front façade created by the new addition.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB/sln