

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(1750-1754 E. Joppa Road)		
11 th Election District	*	OF ADMINISTRATIVE
5 th Council District		
BSH Properties, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
Gavigan's Home Furnishings	*	BALTIMORE COUNTY
<i>Contract Purchaser</i>		
Petitioners	*	CASE NO. 2016-0020-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 BSH Properties, LLC, owner of the subject property and Gavigan's Home Furnishings, contract purchaser ("Petitioners"). The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §229.6(D) to allow parking lot areas to be located 10 ft. from the ultimate street right-of-way in lieu of the required 20 ft. A site plan was marked as Petitioners' Exhibit 1.

Robert Gavigan and land planner Bill Monk appeared in support of the petition. Adam M. Rosenblatt, Esq. represented the Petitioners. The Petition was advertised and posted as required by the B.C.Z.R. No protestants or interested citizens attended the hearing. No substantive Zoning Advisory Committee (ZAC) comments were received.

The subject property is approximately 5.65 acres and is split-zoned BL, BR, BLR & DR 5.5. The property is located along an extremely busy section of Joppa Road, and is surrounded by other commercial uses, including an automobile service garage. The site was the former home of Harold's Fruit Market (a beloved local institution) and a Salvation Army thrift shop. Exhibits 4A & B. Those structures have been razed, and Petitioners propose to construct an attractive new building (30,000 sq. ft.) which will be a furniture store. To do so, variance relief is required.

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).

Petitioners have met this test. The site has an irregular shape and a large environmental buffer area that greatly restricts the available building envelope. As such, the property is unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to construct the proposed building. 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 Baltimore County and/or community opposition.

THEREFORE, IT IS ORDERED, this 2nd day of November, 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.”) §229.6(D) to allow parking lot areas to be located 10 ft. from the ultimate street right-of-way in lieu of the required 20 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.

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