

IN RE: PETITION FOR VARIANCE
S side of Fredrick Road; 106 feet
W of Bloomsbury Lane
1st Election District
1st Councilmanic District
(713 Fredrick Road)

Robert Morsberger
Petitioner

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY
* **CASE NO. 2009-0293-A**

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owner of the subject property, Robert Morsberger. As filed, Petitioner is requesting Variance relief from Section 413.6 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit the existing on-site 10 parking spaces in lieu of the required 23 spaces (due to new deck expansion), a variance of 13 spaces.¹ The subject property and requested relief are more fully depicted on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the variance request were Petitioner Robert Morsberger, James Hanna, Petitioner’s land use consultant, and Louis J. Weinkam, Jr., Esquire, attorney for Petitioner. There were no Protestants or other interested citizens in attendance at the hearing.

It should be noted that this matter came before me as a result of a Code Enforcement Correction Notice that was issued on January 29, 2008 for constructing a deck on the rear of a building without a permit.² The construction of the deck lead to a determination that the

¹ Section 409 of the B.C.Z.R. is the applicable zoning regulation for Off-Street Parking. Petitioner’s reference to Section 413 is misplaced because that section is not in use and is reserved for future regulations.

² Case No: CO-08-0050

property lacked sufficient parking for the original tavern/restaurant use and the additional tavern area utilized by the new deck, hence the filing of the instant request for variance.

Testimony and evidence offered revealed that the subject property is a narrow, rectangular-shaped property that is zoned B.L.-C.C.C. The subject property is located on the southeast corner of the intersection of Frederick Road and Smith Lane, west of Bloomsbury Avenue, in the Catonsville area of Baltimore County. The property is improved with a commercial property, known as Morsberger's Tavern, consisting of 1,440 square feet (18 feet by 80 feet) with an attached recent deck expansion of 616 square feet, creating a total gross area of 2,056 square feet. Ten parking spaces are available for customers and employees of Morsberger's Tavern in the rear of the establishment as shown on the site plan. The surrounding area is comprised of commercial properties and storefronts. A Real Property Data Search indicates that the tavern structure was erected in 1939. Testimony proffered by Petitioner Mr. Morsberger indicated that the tavern was established and run by Petitioner's grand-father in the late 1930's and was thereafter run by Petitioner's father prior to Petitioner's current ownership and management of the tavern. The tavern operation runs through approximately four generations of Petitioner's family.

Further testimony indicates that the existing parking layout has been in use since the 1940's -- prior to the adoption of the Zoning Regulations. In particular, as mentioned above, the parking plan and tavern have been in existence, continuously and without interruption since 1939. Thus, the ten parking spaces have adequately served the subject property are a legally nonconforming, in compliance with Section 104 of the B.C.Z.R., which enumerates the requirements for non-conforming uses. Notwithstanding this finding, the deck expansion adds an extra 616 square feet to the tavern area and thus necessitates the addition of thirteen parking

spaces in order to comply with Section 409.6 of the B.C.Z.R. Petitioner believes that variance relief is warranted for these thirteen parking spaces because of the unique nature and characteristics of the subject property and the undue hardship that would befall Petitioner if strict compliance with the Zoning Regulations were required. Petitioner explained that because of the age of the structure -- dating back to 1939 -- the property is uniquely constrained. Further, the subject property is also constricted by the dense, commercial nature of the surrounding area, rendering compliance with the Zoning Regulations and today's parking standards exceedingly difficult. Moreover, Petitioner stated that strict compliance with the zoning regulations would result in practical difficulty and undue hardship.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comments generally indicate no opposition or other recommendations concerning the requested relief.

Considering all the testimony and evidence presented, I am persuaded to grant the requested variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. The tavern and parking plan have operated in their current state since 1939. Thus, the existing ten parking spaces have adequately served the patrons of Morsberger's Tavern, evidenced by the fact that the current parking layout has stood the test of time. Further, due to the dense commercial environment within which the tavern is located, space to comply with the requirements of the Zoning Regulations is non-existent. It should also be noted that there is abundant public and metered parking in the near vicinity of the tavern. In addition, many patrons walk from parking areas or nearby neighborhoods to and from the tavern. Moreover, the addition of the deck is not intended to attract or add extra patrons. The deck is merely an accommodation to the needs of the current

patrons. There is no bar area or significant seating space on the deck. If Petitioner were compelled to strictly comply with the Zoning Regulations, his business, which has operated in its current location for almost 70 years, would suffer tremendously and would potentially need to move. Further the relative impossibility of providing the required parking is a substantial practical difficulty.

I conclude that the subject property is unique in a zoning sense and that Petitioner would suffer practical difficulty and undue hardship if the variance were to be denied. I further find that the variance can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. Thus, I find that the variance can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R., as established in *Cromwell v. Ward*, 102 Md.App. 691 (1995).

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by Petitioner, I find that Petitioner's variance request should be granted.

THEREFORE, IT IS ORDERED this 21st day of July, 2009 by this Deputy Zoning Commissioner, that Petitioner's Variance relief request from Section 409.6 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit the existing on-site 10 parking spaces in lieu of the required 23 spaces (due to new deck expansion), a variance of 13 spaces, be and is hereby GRANTED. The relief granted herein shall be subject to the following:

1. Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.

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

____SIGNED_____
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz