

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
S side Rolling Mill Road, 1,282 feet SW of	*	OFFICE OF
c/l of Canton Center Drive	*	ADMINISTRATIVE HEARINGS
15 th Election District	*	FOR BALTIMORE COUNTY
6 th Councilmanic District	*	
(7211 Rolling Mill Road)	*	
Fish Lips, LLC	*	CASE NO. 2011-0186-A
<i>Petitioner</i>	*	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Office of Administrative Hearings for consideration of a Petition for Variance filed by Frank V. Boozer, Jr., Esquire on behalf of the legal owner of the subject property, Frank Petillo, President, Fish Lips, LLC. Petitioner is requesting Variance relief from Sections 258.1 and 238.2 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow a side yard setback of .67 feet and a rear yard setback of 0 feet in lieu of the required 30 feet each. 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 2.

Appearing at the requisite public hearing in support of the variance request was Petitioner Frank Petillo, President of Fish Lips, LLC and Frank V. Boozer, Jr., Esquire, attorney for the Petitioner. Also in attendance was Rick Richardson with Richardson Engineering, LLC, the professional engineer who prepared the site plan. Vincent Guida, Jr., Esquire, appeared on behalf of the adjoining property owner, Thomas C. Sanders. Mr. Guida advised that his client took no position regarding whether the variance request should be granted or denied.

Testimony and evidence offered revealed that the subject property is a warehouse facility that was constructed in 1968, and is used in Mr. Petillo’s business as a wholesale seafood and produce marketer. Petitioner’s engineer, Rick Richardson, testified that the relief being sought in

the present case was basically a 10 foot enlargement to a proposed storage building that was the subject of variance relief for the property granted in 2008 by Deputy Zoning Commissioner Thomas H. Bostwick (Case No. 2008-0601-A). Mr. Richardson testified that the property is unique in that it closely abuts the rail line spur which runs near the south side of the property. Mr. Richardson also testified that most of the industrial sites in this area are constructed right up to the property line, so as to avail themselves of the proximity to the rail line. As such, Mr. Richardson further testified that the Petitioner would experience a practical difficulty and hardship if it was not permitted to construct its proposed storage building, since it would not have immediate access to the rail spur. Finally, Mr. Richardson testified that in his opinion granting variance relief in this matter would not present a threat the public safety or welfare.

Petitioner's next witness was Frank Petillo, who is the President and owner of Fish Lips, LLC, the Petitioner and owner of the real property at 7211 Rolling Mill Road. Mr. Petillo testified that he has owned the property for approximately 10 years, and is in the wholesale seafood and produce business. Mr. Petillo testified that he intends to use the proposed structure to store racks of seafood, and that if he was unable to do so it would present a hardship to his expanding business. Mr. Petillo further testified that if the requested variance relief was granted, he would remove from the site an existing above-ground diesel tank located on the western side of the property, facing the property owned by Thomas C. Sanders and located at 7201 Rolling Mill Road. In addition, Mr. Petillo advised that he will plant sod and grass on the western side of his property in the 6 foot setback area indicated on Petitioner's Exhibit 2, and would also relocate a dumpster to the first dock door facing Rolling Mill Road, oriented at the northern portion of the subject property. Mr. Guida expressed some concern on behalf of his clients concerning the exact

location for the dumpster, and to clarify the issue Mr. Richardson marked Petitioner's Exhibit 2 (the site plan) with a red circle and indicated this is where the dumpster would be located.

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

After considering all of the testimony and evidence presented at the hearing, I am persuaded to grant the 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. Specifically, the subject property has an irregular "bend" along its southern border, and abuts a rail line at that point. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioner. As explained at the hearing, Petitioner's wholesale seafood business is expanding, and the proposed storage facility would improve operations and Mr. Petillo testified that he intends to create storage shelves in the additional 10 feet of space (as sought in the variance Petition). Both Rick Richardson and Mr. Petillo also testified that the additional 10 feet sought in the variance would enable the business to immediately abut the rail spur, which would also be advantageous to the operation of Petitioner's wholesale business.

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. The subject property is located in a heavy manufacturing zone, and the grant of variance relief would allow Petitioner to conduct his business up to the property line and adjoining the rail spur, as with the other businesses in the area. Finally, Mr. Richardson testified that in his opinion, the relief requested would pose no harm to the community.

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 January, 2011 by this Administrative Law Judge, that Petitioner's Variance request from Sections 258.1 and 238.2 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to allow a side yard setback of .67 feet and a rear yard setback of 0 feet in lieu of the required 30 feet each be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for its building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appeal period 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.
2. The granting of this variance relief is expressly conditioned upon Petitioner's completion of the improvements discussed at the hearing:
 - 1) Removal of above-ground diesel storage tank;
 - 2) Planting and sodding the 6 foot setback area on the western side of the subject property facing 7201 Rolling Mill Road;
 - 3) Relocating dumpster to northern portion of subject property at the location indicated with a circle marked "dumpster" on Petitioner's Exhibit 2.

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

 SIGNED
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:pz