

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
S side of Eastern Avenue; 278 feet E	*	OFFICE OF ADMINISTRATIVE
of the c/l of Island Point Road		
15 th Election District	*	HEARINGS FOR
7 th Council District		
(8247 Eastern Avenue)	*	BALTIMORE COUNTY
F & E, LLC	*	CASE NO. 2012-0161-SPHA
<i>Petitioner</i>		

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Hearing and Variance filed by the legal owner of the property, F&E, LLC by Fillippos Fillippakis. The Petitioner is requesting Special Hearing relief under Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a waiver for working within a tidal floodplain pursuant to Section 500.6 of the B.C.Z.R., Building Code Section 3112, and Article 32-4-107(a)(2). In addition, Petitioner is requesting variance relief from Section 238.2 of the B.C.Z.R. to permit a side setback of 20 feet from 30 feet, and from Section 409 of the B.C.Z.R. for a parking variance from 155 spaces to 111 spaces. 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 1.

Appearing at the public hearing held for this case was Fillippos Fillippakis of F&E, LLC and Evangelos D. Sidou, Esquire attorney for the Petitioner. J. Scott Dallas, who prepared the site plan, was also in attendance. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

This matter is currently the subject of a violation case (Case No. CO-0094291) before the Office of Administrative Hearings, and a copy of the Code Enforcement file was made a part of the zoning hearing file. It should be noted that the fact that a code violation is issued is generally not considered in a zoning case. Zoning enforcement is conducted by the Department of Permits, Approvals, and Inspections, which has the authority to issue Correction Notices and Citations and to impose fines and other penalties for violation of law. On the other hand, the role of the Administrative Law Judge in this matter is to decide the discreet legal issue of whether the Petitioner is entitled to the requested zoning relief.

With respect to the setback variance, Petitioner seeks relief to allow the open air pavilion to be located 20' from the property line, as opposed to 30' as required by the B.C.Z.R. The Department of Environmental Protection and Sustainability (DEPS) issued a permit for this structure in July, 2011, and Brian Lindley of DEPS verified that the pavilion is now (it was relocated from where the owner originally constructed it) 25' from the water line, as required by environmental regulations.

The parking variance also seems uncontroversial. The regulations require 155 spaces and the Petitioner has provided 111 spaces. The Petitioner testified that he acquired surplus property from the State Highway Administration to increase the number of spaces on site, but that he was unable to provide the requisite 155 spaces. Even so, both Petitioner and its surveyor, Mr. Dallas, testified that there has never been a shortage of parking at the site, even during the busy summer boating season.

Based upon the testimony and evidence presented, I will grant the request for 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. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioners.

Under *Cromwell* and its progeny, to obtain variance relief 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).

The Petitioner has met this test.

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 amply demonstrated by the lack of any neighborhood opposition or negative comments from County agencies.

That leaves for consideration the special hearing relief concerning a waiver for working in a tidal floodplain. The Petition cites Section 32-4-107 of the B.C.C., which requires that such a waiver may be processed only upon the "request of a department director." B.C.C. Section 32-4-107(a)(i). There does not appear to be such a request in the case file, and thus I am unable to grant relief under this provision. Even so, it may be that the Petitioner does not even need a tidal floodplain waiver, given that the pavilion has now been relocated to 25' from the water line, which complies with county and state environmental regulations.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the relief requested shall be granted in part and denied in part.

THEREFORE, IT IS ORDERED, this 17th day of February, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing relief under Section 500.7

of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a waiver for working within a tidal floodplain pursuant to Section 500.6 of the B.C.Z.R., Building Code Section 3112, and Article 32-4-107(a)(2), be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to Section 238.2 of the B.C.Z.R. to permit a side setback of 20 feet from 30 feet, and from Section 409 of the B.C.Z.R. for a parking variance from 155 spaces to 111 spaces, be and is hereby GRANTED.

The relief granted is subject to the following conditions:

1. Petitioner must comply with the comments provided by DEPS in its February 14, 2012 correspondence, attached.
2. Petitioner may apply for its permits 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 the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

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:dlw