

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
N/side of Eastern Avenue at a distance		
of 436' E from c/line of Westham Road	*	OFFICE OF ADMINISTRATIVE
12 <sup>th</sup> Election District		
7 <sup>th</sup> Council District	*	HEARINGS FOR
<b>(7418A &amp; 7418B Eastern Avenue)</b>		
	*	BALTIMORE COUNTY
Zgorski Family at Eastpoint, LLC		
<i>Legal Owner</i>	*	
Essex Moose Lodge		
<i>Contract Lessee/Purchaser</i>	*	<b>CASE NO. 2012-0213-A</b>
Petitioners	*	

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**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of a Petition for Variance filed by Lawrence E. Schmidt, Esquire with Smith, Gildea & Schmidt, LLC, on behalf of the Petitioners. The Petitioners are requesting Variance relief from Sections 409.6.A.4 and 409.8.A.4 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit 19 parking spaces in lieu of the required 33 parking spaces and to allow an 8' setback and 3' setback from the road right-of-way in lieu of the required 10', respectively. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the public hearing in support of the variance request was Robert F. Zgorski with Zgorski Family at Eastpoint, LLC, legal owner, Charles Neal with Essex Moose Lodge, contract purchaser/lessee, John C. Unitas, Jr. with UR Unitas Realty, Inc., and Paul Lee, professional engineer with Century Engineering, the consultants who prepared the site plan. Lawrence E. Schmidt, Esquire appeared as counsel and represented Petitioners. There were no Protestants or other interested parties in attendance. The file reveals that the Petition was properly

advertised and the site was properly posted as required by the B.C.Z.R., and the file does not contain any letters of opposition or protest.

Testimony and evidence revealed that the subject property is 16,530 square feet (0.433 acres) and zoned BR-AS. The property actually consists of two separate businesses: 7418B Eastern Avenue houses a “Labor Ready” facility, which organizes day work for heavy labor jobs in the area. 7418A Eastern Avenue, which is now vacant, will be the location of the Moose Lodge, a 501(c)(3) fraternal organization started in 1913.

Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. A ZAC comment was received from the Department of Planning, dated March 27, 2012, which indicated that agency did not oppose the variance requests, although it suggested that parking space #3 (shown on Exhibit 1) should be removed to allow for curbing and landscaping.

There were no other comments received from any of the County reviewing agencies, although Mr. Zimmerman by email dated April 4, 2012 expressed concern about the inadequacy of parking for the site.

Based upon the testimony and evidence presented, I am persuaded to 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).

Petitioners have met this test.

Mr. Neal, president of the Moose lodge, testified (via proffer) that the average age of club members is 70-80 years old. He stated that membership has been dropping in recent years, and while the lodge now has 360 members, only 15-18 of those members could be considered “active” in any sense. Mr. Neal said the lodge is open three days a week: Wednesday, 5-10 PM, Friday and Saturday, 4-10 PM, and may hold “special events” (like Orioles opening day to watch the game) four or five times a year.

Mr. Lee, the engineer that prepared the site plan, opined the property was unique given its irregular shape and the fact it shares a common wall with the adjoining tenant. Mr. Lee indicated the closest residential area was the Eastwood community at the rear of the site, which was separated by an alley and a tall, slatted fence. As such, he did not believe the variance relief would negatively impact the surrounding community.

As commonly occurs, the B.C.Z.R. does not provide a parking space calculation for a “community building,” which in my opinion is the appropriate categorization of the lodge. Mr. Lee performed a calculation on the plan (note 5) showing that 33 spaces would be required for the lodge and the “Labor Ready” use, which was considered to be an office use. Mr. Schmidt indicated he spoke with the zoning review office, which indicated that 10 spaces for every 1,000 square feet would be appropriate, analogizing to an athletic club and recognizing this facility does not have a kitchen. In either event, the calculation would yield 25 spaces for the lodge and 8 spaces for Labor Ready, or 33 total.

I believe the variance request should be granted, to allow a total of 19 spaces for the two uses. The Ready Labor facility operates only in the early morning – when workers show up and are dispatched to job sites – and early evening, when the workers return and get paid. Conversely, the

lodge is operational only three days a week in the evening, so it does not appear as if the uses will conflict. Also, Mr. Neal indicated only about 15 members are active and attend lodge functions on a regular basis, so that also convinces me the provided parking will be sufficient.

With respect to the parking setback variances, those too should be granted. The Petitioners do not propose any construction on site, and the parking layout and configuration is an existing condition which the variance relief will legitimize.

I am not unmindful of Mr. Zimmerman's comments, but I believe the evidence presented addressed the points raised by People's Counsel. Specifically, Mr. Lee indicated he used the 80 person occupancy solely in an effort to perform the hypothetical parking calculation. Mr. Neal explained that membership and attendance have been dropping precipitously due to deaths of elderly members, and that the lodge has not had near 80 people in attendance for more than 15 years.

If the B.C.Z.R. were strictly enforced, the Petitioners would indeed suffer a practical difficulty. The Petitioners would be unable to use the site for a use which is permitted "as of right" in the BR zone.

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 community opposition, as well as the recommendation of the Department of Planning.

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

THEREFORE, IT IS ORDERED, this 18<sup>th</sup> day of April, 2012, by this Administrative Law Judge that Petitioners' Variance request from Sections 409.6.A.4 and 409.8.A.4 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit 19 parking spaces in lieu of the required 33 parking spaces and to allow an 8' setback and 3' setback from the road right-of-way in lieu of the required 10', respectively, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. The Petitioners may apply for any required permits and may be granted same upon receipt of this Order. However the Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason this Order is reversed, the Petitioners will 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.

JEB:dlw

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County