

IN RE: PETITION FOR VARIANCE
(12532 Eastern Avenue)
15th Election District
6th Councilman District
Donald Wenger
Petitioner

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BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2013-0098-A

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by the legal owner of the subject property, Donald Wenger. The Petitioner is requesting Variance relief from Section 409.6.A of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow 6 parking spaces in lieu of the required 13 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 Donald and Louann Wenger and Sid Gorman. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons in attendance, and the file does not contain any letters of protest or opposition.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the record of this case. There were no adverse comments received from any of the county reviewing agencies.

Testimony and evidence revealed that the subject property is 13,939 square feet (0.32 acres) and is zoned BL. The Petitioner's family has since 1988 operated a lawnmower sales and service facility at the site, as shown on the photographs admitted as Exhibit 2. The grounds are well-kept and the Petitioner indicated his business is growing. As such, the Petitioner proposes to raze a metal garage at the rear of the site, and replace it with a larger prefabricated "pole barn" structure which is used to store customers' equipment waiting to be serviced. Zoning relief is not required for the garage itself, but variance relief is required under the parking regulations.

Based upon the testimony and evidence presented, I will grant the request for variance relief. 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).

Petitioner has met this test. The Petitioner is confronted with existing site conditions (including the placement and configuration of buildings on the site) which render the property unique.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty and/or hardship, since he would be unable to upgrade his storage facility to meet customer demand. 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 opposition from the community and the lack of negative comments from Baltimore County reviewing agencies. In addition, the Petitioner has been in business at the location for over 20 years, and has never had a shortage of parking for customers.

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

THEREFORE, IT IS ORDERED, this 20th day of December, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Section 409.6.A of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow 6 parking spaces in lieu of the required 13 spaces, be and is hereby GRANTED.

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

1. The Petitioner may apply for any required permits and may be granted same upon receipt of this Order; however the Petitioner is hereby made aware that proceeding at this time is at his 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 Petitioner 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.

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:sln