

IN RE: PETITION FOR VARIANCE
(1407 Knecht Avenue)
13th Election District
1st Councilman District
Greco Brothers Construction
Petitioner

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BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2013-0167-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 Michael P. Tanczyn, Esquire on behalf of Greco Brothers Construction, the legal owner of the subject property. The Petitioner is requesting Variance relief from Section 238.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to provide a side yard of 0' to 7' on the west side and 7' to 21' on the east side in lieu of the required 30' (ML area setbacks same as BR) and B.C.Z.R. Section 409.4.A to provide a 16' driveway in lieu of the required 22' wide driveway. 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 in support of the requests was Cosimo Greco and Herbert Malmud. Michael P. Tanczyn, Esquire appeared as counsel and represented the Petitioner. A neighboring owner (Mr. Farmer) attended the hearing to obtain clarification of a few issues. 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 substantive Zoning Advisory Committee (ZAC) comments received from any County reviewing agencies, although the Department of Planning (DOP) expressed support for the petition.

Testimony and evidence revealed that the subject property is 0.309 acres and is zoned ML-IM. The property was first subdivided in 1941, before the adoption of the B.C.Z.R. The Petitioner operates a residential concrete and brick construction company, and would like to construct a warehouse (35' x 60') on the site for storage of equipment and materials. To do so requires variance relief.

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's lot is extremely narrow and deep, as shown on the site plan. It also has steep (35%) slopes on site. As such, the property is unique for zoning purposes.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty since it would be unable to construct any improvements on site. 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 support of the DOP and the lack of community opposition.

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 27th day of March, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Section 238.2. of the Baltimore County Zoning Regulations (B.C.Z.R.), to provide a side yard of varying width – 0' to 7' on the west side and 7' to 21' on the east side – in lieu of the required 30' (ML area setbacks same as BR) and B.C.Z.R. Section 409.4.A to provide a 16' driveway in lieu of the required 22' wide driveway, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for its appropriate 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 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.
2. As stipulated at the hearing, the proposed warehouse shall be situated no closer than 5' (measured building face to building face) from the existing warehouse at 1405 Knecht Avenue.

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