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| <b>IN RE: PETITIONS FOR SPECIAL HEARING,</b> | * | BEFORE THE                      |
| <b>SPECIAL EXCEPTION &amp; VARIANCE</b>      |   |                                 |
| <b>(1707 Edmondson Avenue)</b>               | * | OFFICE OF                       |
| 1 <sup>st</sup> Election District            |   |                                 |
| 1 <sup>st</sup> Councilmanic District        | * | ADMINISTRATIVE HEARINGS         |
| Artistic Ventures, LLC                       |   |                                 |
| Legal Owner                                  | * | FOR BALTIMORE COUNTY            |
| Maria S. Goebel                              |   |                                 |
| Contract Purchaser/Lessee                    | * | <b>Case No. 2013-0180-SPHXA</b> |

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**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of Petitions for Special Hearing, Special Exception and Variance filed by Lawrence E. Schmidt, Esquire, on behalf of the legal owner, Artistic Ventures, LLC and contract purchaser Maria S. Goebel. The Petition for Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to permit: (1) a modified parking plan; and (2) to permit an existing non-conforming lot and building to remain.

A Petition for Special Exception was filed pursuant to §230.3 of the B.C.Z.R., to permit living quarters in a commercial building.

Finally, a Petition for Variance was filed pursuant to the B.C.Z.R. as follows: (1) to permit a lot area of 8,813 sq. ft. in lieu of the required 20,000 sq. ft.; (2) to permit an existing lot width of 26.62 ft. in lieu of the required 100 ft.; (3) to permit an existing front yard setback of 6 ft. in lieu of the required 40 ft; and (4) to permit a side yard setback of 0.5 ft. and a combined side yard setback of 21.5 ft. in lieu of the 15 ft. and 40 ft. respective requirements.

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 Maria and George Goebel and Kenneth Wells from Kj Wells, Inc, the firm who prepared the site plan. Lawrence E. Schmidt, III, Esquire, appeared as counsel and represented the Petitioner. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The only substantive comment was submitted by the Department of Planning (DOP), which expressed support for the petitions, and requested that only one (1) residential unit be permitted in the commercial building.

#### SPECIAL HEARING

The petition for Special Hearing requests two forms of relief, although I believe that only the modified parking plan should be considered. Though the lot, structure, and setbacks may very well qualify as nonconforming under B.C.Z.R. §104.3 and applicable case law, it is preferable to consider the setbacks and lot size/width issues under the variance petition.

With respect to the parking, Petitioner is providing a sufficient number of spaces; it is the maneuverability or drive aisle requirements that are deficient. The Petitioner has operated its art studio business at the site for over 12 years, and has never had a problem with the number of spaces or layout. In addition, the adjoining commercial owner (Oakdale Fine Wine & Spirits) submitted a letter supporting the request. As such, the petition for Special Hearing approving a modified parking plan will be granted.

The Petition for Special Exception seeks to permit living quarters in a commercial building. Mr. and Mrs. Goebel indicated they are looking to “dial back” the scope of their business, and want to create one apartment or rental unit on the second floor of the building to

provide an income stream. That use is permitted in the BL zone (B.C.Z.R. §230.3) by Special Exception, and there was no evidence or testimony presented that would rebut the presumption under Maryland Law that such a use is in fact in the public interest. As such, the petition for Special Exception will be granted.

The final request seeks variance relief with respect to certain lot size and set back requirements. As noted at the outset, these are all existing conditions on site that have existed since the structure was built in 1915.

Based upon the testimony and evidence presented, I will also 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).

The Petitioner has met this test. The lot is split zoned (BL & DR 2) and is shaped like an inverted triangle. As such, it is unique for zoning purposes. The Petitioner would experience a practical difficulty if the regulations were strictly enforced, given they would be unable to rent the second floor space to generate income in retirement. The relief will not negatively impact the community, which is demonstrated by the lack of County and/or neighborhood opposition. In reality, there will be no exterior changes or construction of any sort, and thus in all likelihood the community will not be impacted in any way by the proposal.

THEREFORE, IT IS ORDERED this 2<sup>nd</sup> day of April, 2013, by this Administrative Law Judge, that Petitioner's request for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to permit a modified parking plan, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioner's request for Special Exception filed pursuant to §230.3 of the B.C.Z.R., to permit living quarters in a commercial building, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioner's request for Variance relief: (1) to permit a lot area of 8,813 sq. ft. in lieu of the required 20,000 sq. ft.; (2) to permit an existing lot width of 26.62 ft. in lieu of the required 100 ft.; (3) to permit an existing front yard setback of 6 ft. in lieu of the required 40 ft; and (4) to permit a side yard setback of 0.5 ft. and a combined side yard setback of 21.5 ft. in lieu of the 15 ft. and 40 ft. respective requirements, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for 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. The "living quarters" approved herein shall consist of only one (1) rental unit, to be occupied by no more than two (2) individuals 18 years old or older who are not related to each other by blood, marriage or adoption.

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

JEB/sln

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County