

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(7125-7131 Windsor Mill Road)		
2 nd Election District	*	OF ADMINISTRATIVE
4 th Councilman District		
Kirk & Engrid Randall, John A. Pinnock,	*	HEARINGS FOR
Stephanie Bailey and Dwane & Kaydesha		
Plummer, <i>Legal Owners</i>	*	BALTIMORE COUNTY
Beatrice Properties, LLC,		
<i>Contract Purchaser</i>	*	CASE No.: 2013-0214-A
Petitioners	*	

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Charles B. Marek, Esquire, on behalf of the legal owners of the subject property. The Variance was filed pursuant to Baltimore County Zoning Regulations (“B.C.Z.R”) as follows: (1) to permit a rear yard setback of 20 ft. in lieu of the required 30 ft.; (2) to permit a side yard setback of 17 ft. in lieu of the required 50 ft. and 30 ft.; (3) If necessary, to permit a side yard setback of 35 ft. in lieu of the required 50 ft.; (4) to permit a front yard setback of 56 ft. in lieu of the 75 ft. required; and (5) If necessary, to permit a motorway and residential boundary setback of 56 ft. in lieu of the required 100 ft. The Petitioners presented at the hearing a revised zoning petition (Exhibit 2), reflecting that the proposed improvements had been “pulled back” two feet (2’) from Windsor Mill Road, thus changing by that amount the scope of variance relief needed. 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 requests was John A. Pinnock and Rick Richardson, from Richardson Engineering, LLC, the firm who prepared the site plan. Charles B. Marek, III, Esquire with Smith, Gildea & Schmidt, LLC., appeared and represented the Petitioners. There were no Protestants or interested citizens in attendance, and the file does not

contain any letters of protest or opposition. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Environmental Protection and Sustainability (DEPS) dated April 5, 2013, which indicated that the development of this property must comply with the Forest Conservation Law (Sections 33-6-101 through 33-6-122 of the Baltimore County Code). The Department of Planning (DOP) submitted a comment dated May 8, 2013, which did not oppose the petition, but did set forth several conditions that counsel indicated Petitioners would satisfy. A comment was also received from Bureau of Development Plans Review (DPR) dated April 4, 2013, indicating that a landscape plan must be received and approved prior to issuance of the building permit.

In addition to the ZAC comments, there was also included in the case file a “Note to File” authored by the County’s Zoning Office. This Note pertained to variance request No. 5, which seeks (if necessary) a setback of 58 feet in lieu of the required 100 feet pursuant to BCZR § 253.4. The Zoning Office indicated that this request was akin to a “use variance” rather than a setback variance under BCZR § 307, and that as such it should not be allowed.

When this provision was first discussed with counsel at the hearing, I did not believe that variance relief was needed in the first instance. But on further reflection and review of the regulation, and finding that Windsor Mill Road does not qualify as an “expressway” or “freeway” as those terms are defined in BCZR § 101.1, I believe the setback requirement in § 253.4 is applicable in this case. At the same time, I respectfully disagree with the Zoning Office’s interpretation, and find that the 100 foot buffer in the regulation is a setback requirement subject to variance relief under BCZR § 307. In fact, former zoning commissioners have granted such

variances. See, e.g., 09-192-A; 08-302-A; and 06-463-SPHA.

Under Maryland law an “area variance” seeks relief from a height or setback restriction, while a “use variance” would permit a “use other than that permitted in the particular district....such as a variance for an office or commercial use in a zone restricted to residential uses.” Anderson v. Board of Appeals, 22 Md. App. 28, 38 (1974). The Petitioners are not seeking to use the property in a manner forbidden by the M.L. use regulations; instead, they seek to reduce to 58’ the 100’ requirement in § 253.4, inside of which only car parking and M.R. zone uses are allowed. As such, I believe the request is for an area variance, contemplated by BCZR § 307. I agree with the Zoning Office that BCZR § 253.4 is intended to shield adjoining dwellings from “offensive uses,” many of which are permitted in the M.L. zone. But in this case, only retail uses are proposed, which are (relatively speaking) innocuous when compared to some of the permitted uses in the M.L. zone. In these circumstances, I agree with Petitioners’ counsel that the use will be “complimentary” to the residential uses to the north.

Testimony and evidence revealed that the subject property is approximately 1.05 acres and is zoned ML-IM. The developer will combine 11 small lots (improved with 4 single family dwellings in poor condition) and proposes to raze the dwellings and construct in their place two commercial buildings (a 1 story carry-out restaurant and 1 story retail building) totaling 8,760 SF. The subject property is situated among industrial uses to the south, while north of the site (across Windsor Mill Road) is primarily residential. This demarcation is shown on the 200-scale zoning map submitted as Petitioners’ Exhibit 3, and that map also reflects that the lots comprising the subject property are significantly smaller than the much larger industrial properties to the south.

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).

Petitioners have met this test. As noted above, the subject property contains substantially smaller lots (improved with non-conforming single family dwellings) than the other industrially zoned parcels in the vicinity. Thus, it is unique.

If the B.C.Z.R. were strictly enforced, the Petitioners would indeed suffer a practical difficulty, since they would be unable to construct the proposed commercial buildings. 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 county opposition and the support of the community. Indeed, Mr. Pinnock indicated that several neighbors approached him and expressed enthusiasm for his proposal, that would bring economic investment and vitality to the area.

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 15th day of May, 2013, by the Administrative Law Judge for Baltimore County, that the Variance filed pursuant to Baltimore County Zoning Regulations ("B.C.Z.R") as follows: (1) to permit a rear yard setback of 18 ft. in lieu of the required 30 ft.; (2) to permit a side yard setback of 22 ft. in lieu of the required 50 ft. and 30 ft.; (3) to permit a side yard setback of 35 ft. in lieu of the required 50 ft.; (4) to permit a front yard setback of 58 ft. in lieu of the 75 ft. required; and (5) to permit a motorway and residential boundary setback of 58 ft. in lieu of the required 100 ft, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
- Petitioners must comply with the ZAC comments of DOP, DEPS and DPR, which are attached as exhibits hereto.

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