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| <b>IN RE: PETITIONS FOR SPECIAL HEARING</b> | * | BEFORE THE                  |
| <b>AND VARIANCE</b>                         |   |                             |
| N side Cranbrook Road, 320 feet S c/l       | * | DEPUTY ZONING               |
| Society Park Drive                          |   |                             |
| 8 <sup>th</sup> Election District           | * | COMMISSIONER                |
| 3 <sup>rd</sup> Councilmanic District       |   |                             |
| <b>(334 Cranbrook Road,</b>                 | * | FOR BALTIMORE COUNTY        |
| <b>Briarcliff Apartments North)</b>         |   |                             |
|   | * |                             |
| Briarcliff North Limited Partnership,       |   |                             |
| Alan Gebhart, Managing Member               | * |                             |
| <i>Petitioner</i>                           |   | <b>Case No. 08-337-SPHA</b> |

\* \* \* \* \*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by Alan Gebhart, Managing Member, on behalf of the legal owner of the subject property, Briarcliff North Limited Partnership. The Special Hearing request was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve commercial parking in a residential zone. The Variance request is from Section 1B01.1.B.1.e(5) of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a reduction of the 75 foot Residential Transition Area setback to 51 feet for the proposed parking lot. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the requested special hearing and variance relief was Charles E. Brooks, Esquire, attorney for Petitioner Briarcliff North Limited Partnership, and Rick Gabell, Director of Development, and Terry Arrington, Commercial Property Manager, with Gebhart Properties. Also appearing in support of the requested relief was Joseph Larson with Spellman, Larson & Associates, Inc., the engineering firm that prepared the site plan. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is irregular-shaped and contains approximately 18.277 acres, more or less, and zoned D.R.3.5 and D.R.16. The property consists of the Briarcliff Apartments North and is located on the north side of Cranbrook Road, with Cockeysville Middle School to the west and Cranbrook Shopping Center to the east in the Cockeysville area of Baltimore County. To the north of the subject property is a residential neighborhood zoned D.R.3.5. It is also noteworthy that the adjacent Cranbrook Shopping Center property, which is also irregular-shaped and contains approximately 12.134 acres, more or less, and zoned B.M., is owned by Cranbrook Plaza Enterprises, LLC. Alan Gebhart is also the Managing Member of that entity, and oversees all of the named entities. According to Mr. Brooks, counsel for Petitioner, Mr. Gebhart is the ultimate owner of both Briarcliff North Limited Partnership and Cranbrook Plaza Enterprises, LLC, as well as a number of other business enterprises.

As shown on the site plan, Petitioner is requesting special hearing relief to expand its commercial parking into a residential zone. The reason for this request is that, according to Ms. Arrington, tenants of the shopping center have indicated they are in need of additional parking for their employees so that desirable parking spaces at the storefronts can be utilized more often by customers rather than employees. She also indicated that since the shopping center was refurbished several years ago, tenants have seen an increase in business and, hence, a desire for their customers to have ready access to parking close to the businesses. In addition, the variance request is for a reduction in the Residential Transition Area (RTA) setback from the required 75 feet to 51 feet. As shown on the site plan, the proposed parking area (which is shown as a shaded area on the site plan) will have a similar depth and configuration as the existing adjacent parking located behind the shopping center.

In support of the requests for relief, Mr. Larson, Petitioner's engineering consultant, testified as to the unusual characteristics of the property. Initially, Mr. Larson indicated the subject property is split zoned D.R.3.5 and D.R.16. In addition, it is adjacent to B.M. and very close to D.R.2. Moreover, this particular area of Cranbrook Road where the Cranbrook Shopping Center is located -- between Ridgland Road and Greenside Drive -- is the only commercial/retail area in an otherwise residential area filled mostly with apartment complexes and some single-family neighborhoods.

The closest single-family neighborhood is to the north -- behind the shopping center and the subject property. Mr. Brooks submitted several photographs in support of the requested relief that were marked and accepted into evidence as Petitioner's Exhibits 2A through 2D. These photographs show the existing parking area behind the shopping center, and also show the woods and steep hill that buffer the rear of the shopping center and parking area from the adjacent residential area. Additional photographs were marked and accepted into evidence as Petitioner's Exhibits 3A through 3F. These photographs depict the area where the additional parking will be located on the subject property, adjacent to the existing parking to the rear of the shopping center. As shown in the photographs, the parking proposed on the subject property will be several feet further back from the Residential Transition Area ("RTA") buffer and setback lines than the existing parking to the rear of the shopping center. The photographs also show the heavily wooded area and steep hill that will continue to buffer the residential neighborhood to the north from view of the proposed parking below. Indeed, the height of the hill above the area of the proposed parking varies from approximately 20 to 25 feet.

Section 1B01.1.B.1.a(2) of the B.C.Z.R. states that "[t]he purpose of an RTA is to assure that similar housing types are built adjacent to one another or *that adequate buffers and screening*

*are provided* between dissimilar housing types. (emphasis added). On this point, Mr. Larson indicated that although the proposed parking area would have a 51 foot RTA setback instead of the required 75 feet, the purpose of the RTA would be more than fulfilled because the heavily wooded area and exaggerated height of the hill above the proposed parking area would have at least the same or better screening effect than a full 75 foot setback without these built-in buffers.

As to the special hearing request, Petitioner proposes to locate the commercial parking area in a residential (D.R.) zone. Section 409.8.B.1 allows for the issuance of a use permit for business or industrial parking in a residential zone. Following a public hearing, the Zoning Commissioner may either deny or grant a use permit conditioned upon: (1) his findings following the public hearing; (2) the character of the surrounding community and the anticipated impact of the proposed use on that community; (3) the manner in which the requirements of Section 409.8.B.2 and other applicable requirements are met; and (4) any additional requirements as deemed necessary by the Zoning Commissioner in order to ensure that the parking facility will not be detrimental to the health, safety or general welfare of the surrounding community and as are deemed necessary to satisfy the objectives of Section 502.1 of these regulations. Taking into account the aforementioned criteria, Mr. Larson testified that he is familiar with the site, the configuration and location of the proposed parking area, and the applicable zoning regulations. He testified that the proposed commercial parking area in the residential zone would be sufficiently small in size and have adequate buffering and screening to have virtually no impact on the nearby community. He also testified that the proposed parking would meet the requirements of Section 409.8.B.2 of the B.C.Z.R. and would not have any detrimental impacts on the criteria contained in Section 502.1 of the B.C.Z.R.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comments indicate no opposition to the requested relief. The only substantive comment was from the Office of Planning dated February 29, 2008 and it indicates that any proposed lighting should be reviewed and approved by the County Landscape Architect and should not reflect on adjacent residential properties.

In regard to the requested special hearing, based on the testimony and evidence, I am persuaded to grant the relief. The uncontroverted testimony indicates that the proposed commercial parking in the residential zone will not have negative impacts on the character of the surrounding community, will meet the requirements of Section 409.8.B.2 of the B.C.Z.R. and will not have any detrimental impacts on the 502.1 criteria. I shall also add conditions to ensure continued compliance with the requirements of Section 409.8.B.2 of the B.C.Z.R.

In regard to the request for variance, considering all the testimony and evidence presented, I find that special circumstances or conditions exist that are peculiar to the land which is the subject of the variance request. The property is split zoned D.R.3.5 and D.R.16, is adjacent to B.M., and very close to D.R.2. The property also abuts a residential community located on a hill at least 20 feet above where the proposed parking area will be located. Hence, I find the property unique in a zoning sense.

I also find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. Petitioner has shown that the need for the additional parking area is driven by the desire to accommodate tenants in the adjacent shopping center and their customers. Requiring strict compliance with RTA setback would result in significantly fewer parking spaces and frustrate the anticipated benefit to tenants and their customers. In my judgment, the wooded area and the steep hill between the proposed parking area

and the residential area above will provide sufficient buffering and screening for the spirit and intent of the RTA setback in particular, and the zoning regulations in general, to be realized, and without injury to the public health, safety and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by Petitioner, I find that Petitioner's special hearing and variance requests should be granted with conditions.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 21<sup>st</sup> day of May, 2008 that Petitioner's request for Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve commercial parking in a residential zone be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's request for Variance from Section 1B01.1.B.1.e(5) of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a reduction of the 75 foot Residential Transition Area setback to 51 feet for the proposed parking lot be and is hereby GRANTED, subject to the following:

1. Petitioner may apply for 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 will be required to return, and be responsible for returning, said property to its original condition.
2. Any proposed lighting for the parking area is to be reviewed and approved by the County Landscape Architect and should not reflect on adjacent residential properties.
3. Only passenger vehicles, excluding buses, may use the proposed parking area.
4. No loading, service or any use other than parking shall be permitted.
5. In the event that the need for the proposed parking area for the adjacent Cranbrook Shopping Center ceases or in the event that the shopping center and the subject property (Briarcliff Apartments North) are no longer in common ownership, then the special hearing and variance relief granted hereunder shall be void and of no further force and effect.

6. When applying for any permits, the site plan filed must reference this case and set forth and address the conditions and restrictions of this Order.

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

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SIGNED  
THOMAS H. BOSTWICK  
Deputy Zoning Commissioner  
for Baltimore County

THB:pz