

IN RE: PETITION FOR VARIANCE

SE corner of Philadelphia and
New Forge Roads
11th Election District
5th Councilmanic District
(11565 Philadelphia Road)

Donna Mite Inn, Inc.,
fka Ledfords Welding Co., Inc.
Petitioner and Legal Owner
Michael S. Miller
Contract Purchaser

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
*
* **CASE NO. 2011-0174-A**

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed by the legal owner of the subject property, Donna Mite Inn, Inc., fka Ledfords Welding Co., Inc. Petitioner is requesting Variance relief from Section 409.6 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit 22 parking spaces in lieu of the required 40 parking spaces for a tavern, service garage and apartment. 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.

It should be noted that this matter came before me as a result of a complaint registered with the Code Enforcement Division of the Department of Permits and Development Management¹. A Code Inspections and Enforcement Correction Notice was issued to Petitioner on July 8, 2010 for failure to obtain a building permit for a building on the side of the property and failure to obtain a change of occupancy permit for a different use. Hence, Petitioner filed the instant variance request.

¹ Case No: CO-78487

Appearing at the requisite public hearing in support of the variance request were Petitioner Diana Ervin for Donna Mite Inn, Inc., fka Ledfords Welding Co., Inc., and Michael S. Miller, the contract purchaser. Also attending was David Billingsley, with Central Drafting & Design, Inc., the professional surveyor who prepared the site plan and is assisting the Petitioner through the permit process. Interested citizens attending the hearing were Tony Wolfe, Michael Pierce, Whitney Runk and Carolyn Malinowski.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated December 17, 2010 which indicates that the Office does not oppose the requested variance, but noted the following remarks. The need for the variance was triggered by a complaint about noise from the window tinting business that adjoins the existing tavern. The window tinting business would not generate much parking and the Zoning Regulations only require the business to have 2.3 parking spaces. The existing tavern is a non-conforming use on the property. The tavern generates over 35 parking spaces. Only 22 spaces can be legally designated as parking spaces on the site. On inspection, the existing paving of the site can generate much more than 22 parking spaces. Customers currently park on what appears to be part of the subject property which is actually Philadelphia Road. When the State Highway Administration expanded Philadelphia Road, the right-of-way extended into what originally was part of the subject property's parking lot. The site has a significant amount of unimproved area. However, the site is constrained by floodplains and buffers. The Department further noted that it appeared that a variance to the water quality regulations would be necessary to construct additional parking within the Forest Buffer Easement area. A comment was also received from the State Highway Administration requiring an access permit to be issued; the location of which access point was provided as Petitioner's Exhibit 14.

Comments received from the Department of Environmental Protection Resource Management dated December 22, 2010 indicate that development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains and must also comply with the Forest Conservation Regulations. It appears that a variance to the Water Quality Regulations will be necessary to construct the additional parking area within a Forest Buffer Easement area.

Mr. Billingsley, President of Central Drafting & Design, Inc., testified. He presented the plat of the site in question and described the property as .96 acres zoned BM and BR located at the intersection of Philadelphia Road (MD Route 7) and New Forge Road in the White Marsh area of Baltimore County. The site is presently improved by a two story apartment building, a one story tavern, a small “service garage” a separate office structure, for a total of 4,3075 square feet of space. A small snowball stand on the property was shown, but will be removed by the Petitioner. He related that the tavern and apartment building were of long history on the site and that the service garage and small office structure were utilized by the Petitioner for a car window tinting business.

He testified that on July 8, 2010, the Petitioner was cited by Code Enforcement as no permit had been obtained for the window tinting business to be located at the site. He related that a permit was requested on July 16, 2010, but that the Petitioner was informed that he first needed to obtain Development Review Committee approval. He stated that on August 16, 2010, the Petitioner was granted an A6 exemption to go directly to permit request. However, a site plan for parking was still required. It was determined that the three uses proposed (tavern, two story apartment house, and tinting business) generated the need for more parking under the regulations

than the property could accommodate. The instant Petition for Variance relative to those parking requirements resulted.

Mr. Billingsley referred to Petitioner's Exhibit 1, the Plat to Accompany the Petition for Variance and detailed the location of the proposed 21 spaces plus one in the bay of the tinting business for a total of 22 spaces. He noted that, for all three uses on the site, a total of 40 spaces would be required.

The witness further offered that a new adjacent residential development, Mayfield Estates, has required the expansion of New Forge Road. In addition, the State of Maryland widened the right-of-way of intersecting Route 7 (Philadelphia Road) reducing the frontage of the site from 80 feet to 66 feet. As a result, 9 perpendicular parking spaces previously located on that side of the site (Exhibit 16) were rendered unavailable. He admitted that tavern patrons still utilize these spaces perpendicular to Philadelphia Road, which has no curb or sidewalk to deter its use.

As part of the development of the plan for the site, the State Highway Administration (SHA) has stated that an entrance would be required onto Philadelphia Road as the only point of ingress or egress from the property. That agency also required that the said entrance be included in any Order arising out of this matter. The SHA mandated entrance is located adjacent to the parking spaces noted on Petitioner's plat and was entered as Petitioner's Exhibit 10. The witness related that the Planning Department has noted that the said previously appropriate perpendicular parking spaces on Philadelphia Road would likely be used until eventual curb and guttering was constructed on that section of Philadelphia Road. A landscape plan and other DEPS required approvals would, of course, be required before permit approval as part of the permitting process.

The witness stated that prior to the widening of Philadelphia Road, the layout of the site had allowed for more parking spaces, although still not enough spaces to accommodate the number called for in the regulations.

The witness offered that the service garage called for 2.3 parking spaces, including one in the service bay and 1.3 on an outside parking space. He agreed that there would be no access onto New Forge Road allowed by the County and that parking would only be permitted on the west side of the site. He observed that the southern parts of the site, stretching from the western property line to New Forge Road was located on a 100 year flood plain and forest buffer easement areas; and was also subject to drainage and utility easements.

He concluded by reviewing once again the spaces required by each requested use and stating that, without the granting of the variance, the already existing long term uses of the site as well as the tinting garage would be rendered unable to continue.

Mr. Billingsley responded on cross examination that the tavern was a night and weekend business and that the tinting business was a weekday, Saturday and Sunday day business. There was, in his opinion, little or no overlap. Additionally, he proposed that cars to be worked on could be parked "stadium" style, as the keys to those vehicles would be in the possession of the garage employees.

Tony Wolfe spoke on his own behalf as a resident of the Mayfield Estates community. He testified that, as a result of the continued expansion of Mayfield Estates, traffic at the corner of New Forge Road and Philadelphia Road is becoming increasingly busy; and that the school buses for elementary and middle school pick up their students at the intersection. Based upon his observations, he considers the tavern a day time as well as night business, and related that his wife has also seen intoxicated persons, even in the morning hours, some becoming sick on the street

evidently from their activities at the tavern. He noted in addition that customers of the tavern are also parking on New Forge Road, a situation that will only become more difficult as time goes by.

He described the problems of traffic generated on Philadelphia Road as it approached New Forge Road. He stated that the backing out of vehicles parked perpendicular to Philadelphia Road in front of the tavern was dangerous as it emptied onto Philadelphia Road and oncoming traffic there. He described problems with traffic coming from businesses across Philadelphia Road from the subject site, but admitted those problems existed even before the instant site requests. On a different subject, he testified that he had seen boats and cars shown and advertised for sale from the subject site.

Finally, he communicated his deep concern that as an additional planned 175 homes are added to Mayfield Estates, traffic will certainly greatly increase on both New Forge Road and Philadelphia Road, thus significantly increasing the danger of automobile accidents and resultant injury.

Carolyn Malinowski, a resident on New Forge Road, also testified. Her main concern was the 9 now unpermitted parking spaces perpendicular to Philadelphia Road. She sited the danger posed by drivers backing out onto Philadelphia Road and feared an increasing number of accidents as a result. Although she noted that there have never been the number of parking places called for in the regulations on the subject site, she made clear that she was not asking that the regulations now be enforced to their full extent; but certainly did not want to see a reduction in the number of spots available nor an increase in the uses producing additional parking demand.

Michael Pierce, also a neighborhood resident, testified that allowing the traditional car tinting business merely takes up spaces that would otherwise have been available to the tavern and

apartment building. He agreed that the variance was called for, but not beyond the tavern and the apartment houses uses.

Based upon the testimony and evidence presented, I find that there are special circumstances or conditions that exist that are peculiar and unique to the land which is the subject of this parking variance request. It is clear that the previously existing tavern and two story apartment structure have been supported for many years with less available parking spaces than called for by the applicable regulations. The subsequent loss of 9 of those existing spaces as a result of the State of Maryland's action in the widening of Philadelphia Road visited an additional blow to the existing parking availability. In addition, the site is severely constrained by flood plain and other buffers and easements. Although the comment by the Department of Environmental Protection and Sustainability notes that additional parking might be available as a result of a request for a variance to applicable the Water Quality Regulations, no such request has apparently be made. Nevertheless, it is clear that the tavern and apartment structure cannot continue to operate without the variance to allow less parking than the required minimum, and which has been the norm for many years.

Having gone thus far, other issues present more of a difficulty. Patrons still utilize the inappropriate perpendicular parking on Philadelphia Road. That situation is untenable and represents a continuing danger of accident and injury to the public. Access to these perpendicular parking spots from Philadelphia Road must be prevented, although parallel parking on the site in the area previously used for perpendicular parking to some extent could be presented to the responsible County agencies for approval.

For all of the above reasons, the continuing use of the site for the tinting business is problematic. Although it technically represents only 2.3 parking spaces under the regulations

(including 1 in the “bay”) I believe it would be naïve not to recognize that additional spaces would be utilized by patrons coming and going to the business, and inevitable queue of vehicles awaiting services, and parking for employees. It is also obvious that these inevitable parking uses would occur and carry over to all times of the day and night. The observation by Mr. Billingsley that “stadium” bumper to bumper parking could be used only serves as an acknowledgement on his part of the reality that the number of cars on the site relative to the tinting business would be considerably more than that assigned to that use under the regulations.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested variance relief for the tavern and apartment building ONLY, subject to the conditions set forth below. I further find that the granting of the relief as set forth herein can be accomplished without injury public health, safety, and general welfare. Therefore, in all manner and form, I find that the variance requested can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R. as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

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 variance request for a tavern and apartment ONLY should be granted.

THEREFORE, IT IS ORDERED this 4th day of March, 2011 by this Administrative Law Judge that Petitioner’s Variance request from Section 409.6 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit 22 parking spaces in lieu of the required 40 parking spaces for a tavern and apartment ONLY be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. No activities other than that of the tavern and apartment building shall be permitted on the site.

2. Appropriate barricades or traffic “chocks” shall be put in place to prevent perpendicular parking open to Philadelphia Road. That Petitioner must obtain a Maryland State Highway access permit for the site onto Philadelphia Road as required by the State Highway Administration.
3. Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).
4. Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

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

Signed _____
LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS:pz