

IN RE: PETITION FOR SPECIAL HEARING

NW corner of York Road and
Cockeysville Road
8th Election District
3rd Councilmanic District
10810 York Road, et al

SS&H II, LLC, et al
Petitioners

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* **CASE NO. 2011-0209-SPH**

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OPINION AND ORDER

This matter comes before this Administrative Law Judge for consideration of a Petition for Special Hearing filed by John Koutrakos on behalf of SS&H II, LLC (Parcel 1B), Spartan Foods, Inc. (Parcels 1A and 1C) and the Maryland Department of Transportation, Mass Transit Administration (MTA) (Parcel 2), the legal owners of the parcels comprising the subject property. The Petition for Special hearing, filed in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”), utilizing all previously granted zoning relief, requested modification of the relief granted, the floor area of the listed uses and the site plan which accompanied the Petition in Case No. 2008-413-SPHA (the “2008 Case”), consistent with the relief requested and site plan to accompany this Petition. The subject property and requested relief are more fully described on the plat, prepared by McKee & Associates, Inc., which was marked and accepted into evidence as Petitioners’ Exhibit 1.

The record in this case reflects that the subject property was properly posted and advertised as required by the Baltimore County Zoning Regulations (BCZR). Appearing at the public hearing on this Petition were Geoffrey C. Schultz, PLS, President of McKee & Associates, Inc., the engineering/surveying/land planning firm that prepared Petitioners’ Exhibit 1 and John Koutrakas on behalf of SS&H II, LLC and Spartan Foods, Inc. The Petitioners were represented by Howard L.

Alderman, Jr., Esquire. There were no Protestants or other interested citizens present during the hearing.

The proffered testimony indicated the four (4) parcels comprising the subject property are irregular in shape and have significant topographic constraints compared to other properties in the area. Three of the parcels are zoned BL-AS and the remaining parcel is split-zoned BM-AS and ML-IM. The subject property is now comprised of approximately 1.57 acres.

The testimony proffered indicated that the relief requested in the 2008 Case included approval of a modified parking plan and modified parking requirements for the mix of uses proposed on 1.41 ± acres comprising the subject property at that time. Alternatively, if the special hearing relief was not granted, the Petitioners requested a variance to permit a total of 85 parking spaces in lieu of the 131 parking spaces required. The special hearing relief was granted and the variance relief was dismissed as moot, by Order dated June 27, 2008, a copy of which was accepted into evidence as Petitioners' Exhibit 3.

The Petitioners desire to modify the site plan approved in the 2008 Case to include additional land acquired since 2008 and to modify the floor area size of the uses on the subject property. As summarized, Petitioners propose to increase the restaurant use by 2,292 sq. ft. and to reduce the retail uses by 1,632 sq. ft. The increased restaurant use includes portions of the patio area between Buildings "A" and "B", with the balance of the increase within Building "B", the majority of which is to be devoted to kitchen facilities, all as depicted more specifically on Petitioners' Exhibit 1. Accepted into evidence as Petitioners' Exhibit 2 was a summary chart of existing and proposed uses by Building and overall totals. The Floor Area Ratio of uses remains significantly below that permitted, 0.44 compared to an allowable FAR of 3.0.

The proposed increase in restaurant use results in an increase in the amount of off-street parking required. Petitioners have addressed the increase by adding additional land adjacent to the western boundary of the subject property that permits the reconfiguration of parking spaces in that area from parallel to head-in spaces.

As discussed above, the modified parking relief granted in the 2008 case permitted 85 spaces in lieu of the 131 spaces then required, a difference of 46 parking spaces. In this case, the modification of uses proposed results in a parking requirement of 159 spaces. Through the acquisition of additional land and reconfigured parking, Petitioners are providing a total of 113 parking spaces or 46 fewer than required. Thus, Petitioners have provided the requisite number of additional parking spaces required by the reconfigured uses. A summary of the parking calculations for the uses approved in the 2008 Case and the uses proposed in this case was accepted into evidence as Petitioners' Exhibit 4.

The testimony offered, corroborated by the witnesses who were present and available to testify, was that additional parking requirements for the uses proposed was being met and that all spaces were located within 500 feet walking distance of the building entrance served, pursuant to Section 409.7.B.1 of the BCZR. The Zoning Advisory Committee comments were made a part of the record of this case, none of which had any comments regarding the relief requested.

I am persuaded, based on the evidence and testimony presented, to grant the relief requested permitting a modification of the relief granted, the floor area or size of the mixed uses on the subject property and the site plan that accompanied the Petition in the 2008 Case. It is evident that the increase in parking spaces required is met by the additional parking provided through acquisition of additional land and reconfiguration of spaces. In my judgment, the modification of uses on the

subject property will have no detrimental effect given the increase in available parking spaces and, having heard no evidence to the contrary, I shall grant the special hearing relief.

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

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 23rd day of February, 2011, that the Petitioners' request for Special Hearing relief, filed pursuant to Section 500.7 BCZR, utilizing all previously granted zoning relief, to approve a modification of the floor area of the listed uses and the site plan approved in Case No. 2008-413-SPHA, consistent with the relief requested and the additional parking area and floor area of listed uses shown on the site plan to accompany this Petition be and is hereby GRANTED, subject to the following restrictions which are conditions precedent to the relief granted herein:

1. Petitioners are hereby made aware that proceeding at this time is at its own risk until such time as the thirty (30) day Appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. When applying for a building permit, 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.

Signed
TIMOTHY M. KOTROCO
Administrative Law Judge
for Baltimore County

TMK/pz