

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE
(7300 Old Pimlico Road)
3rd Election District
2nd Councilmanic District
Robert L. & Ellen M. Quinn
Petitioners**

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BEFORE THE
OFFICE OF
ADMINISTRATIVE HEARINGS
FOR BALTIMORE COUNTY

Case No. 2013-0298-XA

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 7300 Old Pimlico Road. The Petitions were filed by Patrick Richardson, on behalf of Robert L. and Ellen M. Quinn, the legal owners of the subject property. The Special Exception Petition seeks relief per Baltimore County Zoning Regulations (B.C.Z.R.) §205.3.B.1 to use the herein described property for a recreational use (Yoga Studio). The Petition for Variance seeks relief under B.C.Z.R. §409.6 to permit 59 parking spaces in lieu of the required 70 spaces. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners' Exhibit 1 .

Appearing at the hearing in support of the Petitions was Robert Quinn and Patrick Richardson from Richardson Engineering, LLC, the firm who prepared the plans. 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 B.C.Z.R.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The only substantive ZAC comment was received from Bureau of

Development Plans Review dated June 17, 2013 stating that a landscape installation certification shall be submitted prior to approval of any permits.

Testimony and evidence offered at the hearing revealed that the subject property is 2.62+/- acres and is zoned OR-1. Mr. Richardson described the history of the property, and indicated that in 2006 Baltimore County approved a development plan for the property, with a one story (16,200 sq. ft.) office building. The building was constructed in December 2012, and the largest tenant is the Goddard preschool. The Petitioners propose to lease 3,000 square feet of space to a yoga studio. Such a use would constitute a “community building” and pursuant to B.C.Z.R. §205.3 would be permitted by Special Exception.

SPECIAL EXCEPTION

Under Maryland law, a Special Exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. Schultz v. Pritts, 291 Md. 1 (1981). The Schultz standard was revisited in People’s Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that a Special Exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the Special Exception use. There was no such evidence presented in this case, and the yoga studio would seem to be an innocuous and complimentary use at this location.

VARIANCE

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 shown on the plan, the site is irregularly shaped and is constrained by extremely steep slopes. Thus, it is unique for zoning purposes.

If the B.C.Z.R. were strictly enforced, the Petitioners would suffer a practical difficulty, given they would be unable to lease the space to the yoga studio operator. 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 and/or community opposition.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions, and after considering the testimony and evidence offered, I find that Petitioners' Special Exception and Variance requests should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 23rd day of August, 2013, that Petitioners' request for Special Exception relief under the B.C.Z.R., to use the herein described property for a recreational use (Yoga Studio), be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioners' request for Variance relief from B.C.Z.R. §409.6 to permit 59 parking spaces in lieu of the required 70 spaces, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioners may apply for appropriate permits and/or licenses 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.
2. Petitioners must comply with the ZAC comments submitted by DPR, a copy of which is attached 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