

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(1101 Reisterstown Road) *	OFFICE OF
3 rd Election District	
2 nd Council District *	ADMINISTRATIVE HEARINGS
Brezhnev, LLC, <i>Owner</i>	
GN Reisterstown, LLC *	FOR BALTIMORE COUNTY
<i>Contract Purchaser</i>	
Petitioners *	Case No. 2015-0172-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of Brezhnev, LLC, legal owner, and GN Reisterstown, LLC, contract purchaser (“Petitioners”). The Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to approve the amendment of site plans and orders in Case Nos. 52-2313-X and 55-3342-X; such that the approved site plan will be the site plan that is the subject of this petition. In addition, a Petition for Variance seeks to permit the existing 5 parking spaces in lieu of the required 14 spaces.

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 were Nilkanth Patel (on behalf of the contract purchaser) and Rick Richardson, professional engineer, whose firm prepared the plan. Stuart D. Kaplow, P.A., represented the Petitioners. Michael Pierce, on behalf of the Pikesville Community Corporation, and Deane Rundell (a neighbor) attended and opposed the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR).

The subject property is zoned BL. The site is 0.23 acre ±, and is improved with a 2-story brick building, as shown in the photographs admitted as Petitioners' Exhibit 2. The building was used most recently as a bank with a drive-thru operation, but Petitioners noted the property has essentially been vacant for approximately eight years or more. Petitioners propose to operate a Dunkin Donuts store at the site, and the business will utilize the drive-thru layout previously used by the bank. Mr. Patel has two other Dunkin Donuts franchises in the Pikesville area, and he believes this to be a suitable location for a new store, especially since it will make good use of the small site by relying primarily on window service, though there will be a few indoor seats.

Messr. Pearce and Rundell both expressed concern with traffic along Reisterstown Road, and feared the proposal could lead to congestion and hazardous conditions for motorists and pedestrians. They also expressed disappointment the proposal would not be reviewed by the Design Review Panel (DRP).

As explained at the hearing, DRP review is required in the Pikesville Revitalization Area, but only for consideration of "nonresidential Development Plans." BCC §32-4-204©(5). But this is a zoning case, and a nonresidential Development Plan was not presented and is not being considered. Petitioners stated there will be no external construction or improvements of any sort. As such, DRP review is not required.

With regard to traffic, Reisterstown Road is obviously a heavily travelled thoroughfare that is subject to congestion and delays. But it is a state roadway and the SHA (in a letter dated February 25, 2015) did not object to the proposal or require Petitioners to undertake a traffic study, a requirement frequently imposed by the SHA. In addition, the property is not located within a deficient service area on the Basic Services Map (transportation). Thus, I do not believe traffic concerns justify the denial of the parking variance.

The file contains letters of support from the Pikesville Chamber of Commerce and Barry Nabozny, who lives nearby. The DOP recommended approval of the request, but suggested landscaping be provided along Reisterstown Road. The Bureau of Development Plans Review (DPR) indicated the planting islands along Reisterstown Road should remain, and that agency advised a landscape plan is required.

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. The property has an irregular shape (trapezoidal) and is therefore unique. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty, given that Petitioners would essentially be unable to operate any commercial enterprise at the B.L. zoned site in compliance with the parking requirements set forth in B.C.Z.R. §409. In fact, counsel for Petitioners noted that only a furniture store could be operated without seeking variance relief. 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.

THEREFORE, IT IS ORDERED this 15th day of April, 2015, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to §500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to approve the amendment of the site plans and orders in Case Nos. 52-2313-X and 55-3342-X; such that the approved site plan will be the site plan that is the subject of this petition (admitted as Petitioners' Exhibit 1), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to permit the existing five (5) parking spaces in lieu of the required fourteen (14) spaces, be and is hereby GRANTED.

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

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
2. All signs on the premises shall comply with BCZR §450.
3. Petitioners shall retain existing landscape islands along Reisterstown Road, and shall provide additional landscape screening as determined in the sole discretion of the County's landscape architect.

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

JEB/sln

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County