

IN RE: PETITIONS FOR SPECIAL HEARING,	*	BEFORE THE
SPECIAL EXCEPTION & VARIANCE	*	OFFICE OF
(2322-2324 N. Rolling Road)	*	ADMINISTRATIVE HEARINGS
2 nd Election District	*	FOR BALTIMORE COUNTY
4 th Council District	*	Case No. 2015-0042-SPHXA
Adebayo & Modupe Togun	*	
<i>Legal Owners</i>	*	
Petitioners	*	

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of Petitions for Special Hearing, Special Exception and Variance filed on behalf of Adebayo & Modupe Togun, legal owners. The Petition for Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow off-street parking spaces on multiple lots within the site in lieu of the requirement that the spaces be located on the same lot on which the Class B office building is proposed, and to confirm that such request does not conflict with B.C.Z.R. Sections 204.3.C.2 and 204.4.C.7. A Petition for Special Exception was filed pursuant to B.C.Z.R. §204.3.B.2 for a class B office building in the RO zone. Finally, a Petition for Variance was filed pursuant to B.C.Z.R. as follows: (1) to allow a side yard setback a minimum of 7 ft. in lieu of the required 20 ft.; (2) to allow a landscape buffer a minimum of 10 ft. along a property line which abuts a residentially zoned/residentially used property in lieu of the required 20 ft. landscape buffer; and (3) to allow a freestanding directional sign with a height of 7 ft. and a sign area/face of 35 sq. ft. in lieu of the permitted 4 ft. in height and 8 sq. ft.

Appearing at the public hearing in support of the requests was Adebayo and Modupe Togun, and professional engineer Mike Razavi, whose firm prepared the plan. David H. Karceski, Esq. and Adam Rosenblatt, Esq. represented the Petitioners. There were no protestants or

interested citizens in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A Zoning Advisory Committee (ZAC) comment was submitted by the Bureau of Development Plans Review (DPR). That agency did not oppose the request, but requested that landscape and lighting plans be submitted prior to issuance of permits.

SPECIAL HEARING

The petition for special hearing pertains to the location of the parking for the proposed office building. The parking would be on-site, but would not be on the same “lot” as the building itself, as required by the R.O. zone regulations. I believe the intent of the regulation is to prevent offsite parking (which would likely be in a residential zone, which often adjoins an R.O. zone) to serve the office building. That concern is not animated here.

The subject property was subdivided in the 1980s, and that development plan created five lots on the site (Exhibit 8). The residential subdivision never came to fruition, but it is the multiple lots comprising the site which created the need for the special hearing. .

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. No such evidence was presented in this case, and Mr. Razavi testified (via proffer) the proposal satisfied the requirements set forth in B.C.Z.R. §502.1. As such, the petition will be granted.

VARIANCES

Based upon the testimony and evidence presented, I will also grant the petition for variance.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

The Petitioners have met this test. The property has an irregular “L” shape, and though it fronts on three roads it has access on only one. As such the property is unique. If the B.C.Z.R. were strictly interpreted, the Petitioners would suffer a practical difficulty since they would be unable to construct the proposed building. 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.

THEREFORE, IT IS ORDERED this 18th day of November, 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 allow off-street parking spaces on multiple lots within the site in lieu of the requirement that the spaces be located on the same lot on which the Class B office building is proposed, and to confirm that such request does not conflict with B.C.Z.R. Sections 204.3.C.2 and 204.4.C.7., be and is hereby GRANTED;

IT IS FURTHER ORDERED that the Petition for Special Exception pursuant to B.C.Z.R. §204.3.B.2 for a class B office building in the RO zone, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance as follows: (1) to allow a side yard setback a minimum of 7 ft. in lieu of the required 20 ft.; (2) to allow a landscape buffer a minimum of 10 ft. along a property line which abuts a residentially zoned/residentially used property in lieu of the required 20 ft. landscape buffer; and (3) to allow a freestanding directional sign with a height of 7 ft. and a sign area/face of 35 sq. ft. in lieu of the permitted 4 ft. in height and 8 sq. ft., be and is hereby GRANTED.

The relief granted herein shall be subject to 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. Prior to issuance of permits, landscape and lighting plans must be submitted for approval by the Baltimore County Landscape Architect.

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