

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(10109 Reisterstown Road)	*	OFFICE OF
3 <sup>rd</sup> Election District		
2 <sup>nd</sup> Council District	*	ADMINISTRATIVE HEARINGS
DavCo Restaurants, LLC, <i>Owner</i>		
AutoZone Development, LLC, <i>Lessee</i>	*	FOR BALTIMORE COUNTY
Petitioners	*	<b>Case No. 2016-0126-SPHA</b>

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**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for consideration of amended Petitions for Special Hearing and Variance filed on behalf of DavCo Restaurants, LLC, legal owner and AutoZone Development, LLC, Lessee (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve business parking in a residential zone (DR 16) and a waiver of certain floodplain requirements. In addition, a Petition for Variance seeks: (1) to allow 28 off-street parking spaces in lieu of the required 37 parking spaces; and (2) to allow a front yard setback of 12 ft. in lieu of the permitted 46 ft. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the requests was professional engineer Joshua Bryant. David H. Karceski, Esq. and Adam Rosenblatt, Esq. appeared and represented the Petitioners. Liz Buxton, on behalf of the Valleys Planning Council (VPC), attended the hearing but did not object to 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). Both comments concerned the need for a landscape plan, and a condition to that effect will be included below.

The subject property is approximately 26,494 square feet and is zoned BL and DR 16. At present, a Wendy's restaurant operates at the site. Petitioners propose to raze the existing building and construct in its place an Auto Zone franchise, which is a retail store selling automotive parts and accessories.

### VARIANCES

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).

Petitioners have met this test. As Mr. Bryant testified (via proffer) the site is "pinched" on 3 sides, which renders the property unique. There is a floodplain on one side, a residential zone on another and the State Highway Administration (SHA) recently acquired in a condemnation proceeding an additional 10 feet of Petitioners' property along the Reisterstown Road frontage. Petitioners would experience practical difficulty if the regulations were strictly interpreted because they would be unable to construct the proposed improvements. 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.

### SPECIAL HEARING

The first special hearing request pertains to business parking in a residential zone, pursuant to B.C.Z.R. §409.8.B. The site plan reflects that nine (9) off-street parking spaces would be located within the sliver of DR 16 zoning at the rear of the site. Incidentally, the adjoining property, also zoned DR 16, is improved with a two-story commercial building owned

by Verizon. The Wendy's restaurant was constructed in 1978, and Petitioners noted parking spaces have since that time been located in the residential zone.

Mr. Bryant researched the issue and advised the small portion of the site has been residentially zoned since at least 1976, prior to construction of the Wendy's. There was no zoning history listed for the property, and thus it appears the Wendy's has used these parking spaces for nearly 40 years without the necessary zoning relief. That fact is mentioned not to cast aspersions on Petitioners; rather, it is evidence that the use has existed for many years without complaint and has not had a detrimental impact upon the community. Mr. Bryant opined Petitioners satisfy all requirements set forth at B.C.Z.R. §§409.8.B & 502.1, and I concur.

The second special hearing request seeks a waiver of the floodplain regulations, to permit certain portions of the site (infrastructure items like curbs, dumpster and fencing) to be within a riverine floodplain. As with the business parking in a residential zone discussed above, the Wendy's operation has also had pavement and infrastructure situated within the floodplain for many years. That condition or intrusion does not appear to have had a detrimental impact upon the community, and Mr. Bryant prepared and submitted to the Department of Public Works (DPW) a plan detailing the boundaries of the floodplain and the proposed improvements therein. Petitioners' Ex. 7. That plan, which was reviewed and approved by DPW (Petitioners' Ex. 6), indicates there will be "no impacts or flooding to downstream properties as a result of the proposed development." Ex. 7, note 1. As such, this request will also be granted.

THEREFORE, IT IS ORDERED this 22<sup>nd</sup> day of April, **2016**, 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: (1) business parking in a residential zone (DR 16); and (2) a waiver pursuant to the B.C.Z.R., Baltimore County Code and Baltimore County Building

Code to permit existing and proposed pavement, curb and gutter, drainage inlet/pipe, dumpster pad and enclosure, lighting, bollards and fencing in the floodplain, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to allow 28 off-street parking spaces in lieu of the required 37 parking spaces; and (2) to allow a front yard setback of 12 ft. in lieu of the permitted 46 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. Petitioners must submit for approval by Baltimore County landscape and lighting plans for the site.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:sln