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| IN RE: PETITIONS FOR SPECIAL HEARING | * | BEFORE THE |
| AND VARIANCE | | |
| (4140 E. Joppa Road) | * | OFFICE OF |
| 11 th Election District | | |
| 5 th Council District | * | ADMINISTRATIVE HEARINGS |
| John & Tom Properties, LLC, | | |
| Koros, LLC, <i>Owners</i> | * | FOR BALTIMORE COUNTY |
| J.C. Bar Properties, Inc., <i>Contract Purchaser</i> | | |
| Petitioners | * | Case No. 2016-0110-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 John & Tom Properties, LLC, and Koros, LLC, legal owners and J.C. Bar Properties, Inc., contract purchaser (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to confirm that 2 stacking spaces are required for the drive-through facility for a drug store (not including the space next to the transaction window); and (2) to allow business parking in a residential zone (ROA). In addition, a Petition for Variance seeks to allow 137 off-street parking spaces in lieu of the required 165 parking spaces. An amended petition was submitted at the hearing (Exhibit 2), and it seeks variance relief from the RTA setback and buffer requirements. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1A - 1C.

Appearing at the public hearing in support of the requests was Joseph Ucciferro, Jason Mitchell, Dan Wallace, Eric McWilliams and Carol Wilson. David H. Karceski, Esq., and Adam Rosenblatt, Esq. represented the Petitioners. Richard Matz, a professional engineer, attended the hearing and indicated that his client owns commercial property which adjoins the subject property. Mr. Matz testified his client was concerned about a retaining wall which serves as a boundary between the two properties. The site plan was amended with a red lined note stating

that the parties will cooperate during the construction phase of the project to agree upon a design for the new retaining wall to be constructed by Petitioners. Ex. 1A. No other protestants or interested citizens were in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations.

A substantive Zoning Advisory Committee (ZAC) comment was received from the Bureau of Development Plans Review. That agency did not object to the parking variance request, but noted that Brookfield Road may need to be widened and an “adequate turnaround at the end may be required.” According to the plan, Brookfield Road is a short, dead-end street which is nearly 50 ft. wide. Six single-family dwellings are situated on Brookfield Road, and witnesses stated that tractor trailers routinely use the street to make deliveries to the restaurant. As such, it is unclear at this juncture why the road would need to be widened; in any event, this issue is more appropriately addressed during development plan approval.

The subject property is approximately 2.821 acres and is zoned BL and ROA. The site is improved with three single family dwellings and a Double T Diner Restaurant. Ex. 1B. The Petitioners propose to raze the homes, relocate the restaurant on the site and construct a new CVS pharmacy. The property is located within the Perry Hall Design Review Area, which necessitated review by the Design Review Panel (DRP). The DRP reviewed the proposal in July and September, 2015 and approved the plans and a pattern book (Exhibit 5), as set forth in a memorandum dated November 24, 2015. (Exhibit 7). To accommodate the changes required by the DRP, Mr. Ucciferro (a professional engineer accepted as an expert) testified eight (8) parking spaces needed to be removed from the plan, and Mr. McWilliams (a registered landscape architect accepted as an expert) testified the schematic landscape plan (Ex. 10) was revised to increase the number of trees and other plantings, such that Petitioners will exceed significantly the requirements set forth in the Landscape Manual.

SPECIAL HEARING

B.C.Z.R. §409.10.A does not specify the number of stacking spaces required for a drive-thru pharmacy. The regulation merely states that the number of required stacking spaces shall be “[a]s determined by the Zoning Commissioner.” Dan Wallace, who is employed by J.C. Bar Properties, testified he has been involved in the construction of numerous CVS stores, and that two stacking spaces would be sufficient. Similar testimony was presented by Mr. Ucciferro, who also opined that two stacking spaces would be sufficient, and that other drive-thru pharmacies in this area have a similar number of spaces. In light of this undisputed testimony this special hearing request will be granted.

The other special hearing request concerns business parking in a residential (ROA) zone. Mr. Ucciferro testified 14 parking spaces would be located in the ROA zone, and that there will be significant landscaping and buffering to screen the view from the dwellings located across Brookfield Road. In an email dated January 27, 2016 (a copy of which is included in the case file) Baltimore County Landscape Architect Jean Tansey reached a similar conclusion. Mr. Ucciferro opined the Petitioners satisfied both B.C.Z.R. §§409.8 and 502.1, and he did not believe the limited amount of parking in the ROA zone would have a detrimental impact on the residential properties. In light of this testimony, and considering that only 10% of the off-street parking provided on site would be located in the ROA zone, this request will also be granted.

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. The property is irregularly shaped and there is a significant grade change (i.e., as much as 30 feet) across the site. As such it is unique. If the B.C.Z.R. were strictly interpreted, Petitioners would experience a practical difficulty given they would be unable to redevelop the site as planned. Finally, I find that the variances 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 approval of the DRP and the lack of community or County opposition.

THEREFORE, IT IS ORDERED this 3rd day of **February, 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 confirm that 2 stacking spaces are required for the drive-through facility for a drug store (not including the space next to the transaction window); and (2) to allow business parking for no more than fifteen (15) passenger vehicles in a residential zone (ROA), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to allow 137 off-street parking spaces in lieu of the required 165 parking spaces; and (2) to allow off-street parking spaces for no more than fifteen (15) passenger vehicles to be located a minimum of 20 ft. from a tract boundary and RTA buffer, in lieu of the required 75 ft. and 50 ft., respectively, 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.

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:slh