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| IN RE: PETITIONS FOR SPECIAL HEARING * | BEFORE THE |
| AND VARIANCE | |
| (10810 York Road) * | OFFICE OF |
| 8 th Election District * | ADMINISTRATIVE HEARINGS |
| 4 th Council District * | |
| SS& H II, LLC, <i>et. al.</i> * | FOR BALTIMORE COUNTY |
| Petitioners * | Case No. 2015-0265-SPHA |

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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 the legal owners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows: (1) to approve a modified parking plan and modified parking requirements for these contiguous uses and parcels; and (2) to approve a modification of the relief granted, certain floor areas of the listed uses and the site plat which accompanied the Petition in Case No. 2011-0209-SPH, consistent with the parking area and floor area of listed uses, all as shown on the plat which accompanies this Petition. In addition (and as an alternative to the modified parking plan special hearing request) a Petition for Variance was filed pursuant to B.C.Z.R. § 409.6.A.2 to permit 163 parking spaces in lieu of the 239 parking spaces required.

A two-sheet site plan was marked and accepted into evidence as Petitioners’ Exhibit 1A & 1B. As shown thereon, the subject property is comprised of several individual parcels (Parcels 1A-1E & Parcel 2) owned by various corporate entities. Several uses are conducted on the property, including retail, restaurant, service garage and offices. Petitioners have presented a comprehensive site plan which proposes to satisfy the off-street parking requirements on an aggregate basis by way of a modified parking agreement.

Appearing at the public hearing in support of the requests was John Koutrakos, Geoffrey Schultz and Andy McIlvaine. Howard L. Alderman, Jr., Esq. appeared and represented the Petitioners. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. No protestants or interested citizens attended. Substantive Zoning Advisory Committee (ZAC) comments were submitted by the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR).

PETITION FOR SPECIAL HEARING

The petition for special hearing seeks approval of a modified parking plan, as provided in B.C.Z.R. §§ 409.13 and 409.8. Mr. Schultz testified (via proffer) the Petitioners satisfied the standards set forth in the above sections, and I concur. No evidence was presented to suggest that parking at this site has been problematic or deficient in any respect. Counsel for Petitioners correctly noted that the current site plan (the approval of which is sought in the second special hearing request) in effect creates a “campus” with the various buildings and uses shown thereon, and a modified parking plan (rather than a variance) seems to be the appropriate mechanism to address a unique site such as this.

The Bureau of DPR noted in its ZAC comment a landscape plan is required, and the Order below includes such a condition. The DOP expressed concern that the State of Maryland did not sign the petition, though it is the legal owner of a small portion of the site (Parcel 2) leased by Petitioners. Counsel noted the State, while it did not support or oppose the zoning requests, did not object to the filing of the petition, and a letter from the Maryland Transit Administration (MTA) (Exhibit 3) to that effect was submitted by Petitioners. In addition, while in an ordinary case every owner must sign the petition, this case is unusual in that the State of Maryland is one of the owners. The State is not subject to county zoning laws, and for that reason also it is not necessary for that entity to sign the zoning petition.

The other concern raised by the DOP related to a proposed shared-use bicycle path that would traverse a portion of the property owned by the MTA. The State leases that property to Petitioners, and the area in question is identified on the plan as Parcel 2, 0.34 acres. According to the documents submitted at the hearing, the “License Agreement” permits Petitioners to use the space for the sole purpose of customer parking. That agreement began on May 25, 2006, and the initial term expired on May 25, 2011. The agreement, absent a notice of termination, renews for “successive one-year periods.” Exhibit 2. Should the plans for the bicycle path come to fruition, the State would have the ability as owner to terminate the agreement with Petitioners, assuming of course it was inclined to do so and was supportive of the bike path project.

By letter dated July 16, 2015, Michael Pierce asserts that Petitioners failed to satisfy the posting and notice requirements set forth in the County Code. Having reviewed Mr. Pierce’s correspondence, I believe he has a point. The petition, sign, advertisement and all case notices provide an address of 10810 Cockeyville Road, which is incorrect. That address is in fact on York Road and Mr. Pierce notes that a sign was not placed on that road. Even so, the subject property was posted (at 18 Cockeyville Road, which is among the properties for which relief was sought) and it is not clear that the regulations would require a second sign to be posted on York Road. In these circumstances I believe Petitioners “substantially complied” with the notice requirements of the County Code, which is all the law requires. Cassidy v. Balto. Co., 218 Md. 418, 425 (1958). The caption on this Order was changed to reflect the York Road address, and Petitioners will be required to submit an amended zoning petition with the correct address.

THEREFORE, IT IS ORDERED this 23rd day of **July, 2015**, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R) as follows: (1) to approve a modified parking plan and modified parking requirements for these contiguous uses and parcels; and (2) to approve a modification of the relief

granted, certain floor areas of the listed uses and the site plat which accompanied the Petition in Case No. 2011-0209-SPH, consistent with the parking area and floor area of listed uses, all as shown on the plat (Exhibits 1A & 1B) which accompanies this Petition, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to B.C.Z.R. § 409.6.A.2 to permit 163 parking spaces in lieu of the 239 parking spaces required, be and is hereby DISMISSED without PREJUDICE (as unnecessary).

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. Petitioners must submit for approval by Baltimore County a landscape plan for the site.
3. Petitioners must within 15 days of the date hereof submit an amended zoning petition (face page only) with the correct address for the parcel owned by SS&H II, LLC.

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