

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(2915 Joppa Road) *	OFFICE OF
9 th Election District	
5 th Council District *	ADMINISTRATIVE HEARINGS
Stanley & Denise Feiden and	
Paul & Rosemary Krause, <i>Legal Owners</i> *	FOR BALTIMORE COUNTY
JC Bar Development, LLC,	
<i>Contract Purchaser</i> *	Case No. 2015-0304-SPHA
Petitioners	
* * * * *	

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 Stanley & Denise Feiden and Paul & Rosemary Krause, legal owners, and JC Bar Development, LLC, contract purchaser (“Petitioners”). The Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows: (1) to approve commercial parking in a residential zone; (2) to approve four stacking spaces, not including space next to the transaction window, for a pharmacy drive-up window; and (3) to permit access to a commercial use through a residential zone.

In addition, an amended Petition for Variance seeks the following: (1) to allow off-street parking spaces to be located a minimum of 15 feet from a tract boundary in lieu of the required 75 feet and to remove the required 50 foot landscaped residential transition area along the western portion of the property that is proposed to be undeveloped open space. In lieu, a 15-foot Class “A” landscape buffer will be provided; (2) from B.C.Z.R. §409.8 to permit a setback of 3 ft. in lieu of the required 10 ft. setback requirement from an adjoining commercial property; and (3) to permit a freestanding sign to be erected 0 ft. from a residential zone in lieu of the required 25 ft. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1A & 1B.

Appearing at the public hearing in support of the requests was Jason Mitchell, Dan Wallace, Eric McWilliams, Carl Wilson, Garry Russell and Joseph Ucciferro. 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. Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and Bureau of Development Plans Review (DPR). The DOP did not oppose the relief, but requested a note be added to the plan concerning a 2012 rezoning of the property. The Petitioners added such a note to the plan, and thus the DOP comment is satisfied. DPR requested a landscape plan for the site, and a condition to that effect is included below.

SPECIAL HEARING

The subject property contains approximately 3.04 acres and is located at the intersection of Joppa and Harford Roads. Petitioners propose to construct a CVS pharmacy, and due to several site constraints variance and special hearing relief is required.

The first special hearing request concerns commercial parking in a residential zone. The plan shows four parking spaces would be located in the DR zone, adjacent to an open space area of the site Petitioners propose to convey to NeighborSpace. Mr. Ucciferro, a professional engineer accepted as an expert, testified Petitioners satisfy all requirements in B.C.Z.R. §409.8, and I concur.

The second special hearing request relates to the number of stacking spaces required for a pharmacy drive thru lane, an issue which is not addressed in the Regulations. Developer's representatives noted the average drive thru transaction time at CVS is approximately 3-4 minutes, which means that an extended queue is unlikely. Other CVS stores in Baltimore County have been approved with only 2 stacking spaces, and Petitioners are confident four

spaces would accommodate even the busiest peak-hour periods at the store. As such, I believe four stacking spaces are sufficient for the proposed CVS.

The final special hearing request seeks approval for accessing a commercial use through a residential zone. Counsel indicated the Zoning Commissioner's Policy Manual (ZCPM) provides that such access is permitted when "it is the sole access to the site." ZCPM, p.1-42.2. As Mr. Ucciferro testified, the Joppa Road access shown on the plan, located in a residential zone, is the only "full access" point for the store. As such the request will 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. Mr. Ucciferro testified the property is irregularly shaped and that a significant grade change (approximately 25 feet) exists at the site. As such it is unique. Petitioners would experience practical difficulty if the regulations were strictly interpreted because they would be unable to construct the proposed CVS store. 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 18th day of May, 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) as follows: (1) to approve commercial parking in a residential zone; (2) to approve four stacking spaces, not including space next to the transaction window, for

a pharmacy drive-up window; and (3) to permit access to a commercial use through a residential zone, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to allow off-street parking spaces to be located a minimum of 15 feet from a tract boundary in lieu of the required 75 feet and to remove the required 50 foot landscaped residential transition area along the western portion of the property that is proposed to be undeveloped open space. In lieu, a 15-foot Class “A” landscape buffer will be provided; (2) from B.C.Z.R. §409.8 to permit a setback of 3 ft. in lieu of the required 10 ft. setback requirement from an adjoining commercial property; and (3) to permit a freestanding sign to be erected 0 ft. from a residential zone in lieu of the required 25 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 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.

JEB/sln

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County