

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(9616 & 9618 Belair Road)		
11 th Election District	*	OFFICE OF
5 th Council District		
	*	ADMINISTRATIVE HEARINGS
Rosedale Federal Savings &		
Loan Association	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
Petitioner	*	Case No. 2016-0063-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed on behalf of Rosedale Federal Savings and Loan Association, legal owner. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve accessory parking in a residential (RO) zone to support a commercial use in a commercial (BL) zone.

Chris Lester, Linda Muffoletto, Matt Bishop and Bill Monk appeared in support of the petition. Adam Baker, Esq. represented the Petitioner. Several members of the community, whose names are on the sign in sheets, opposed 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). The DOP opposed the request, and opined that parking should be “limited to sides and rear of building.” (Emphasis in original). The DPR noted landscape and lighting plans are required.

The subject property is 2.77 acres and is split-zoned BL and RO. The headquarters for Rosedale Federal is on the subject property. The Petitioner indicated the bank is continuing to grow, and would like to construct a new building on the site with accessory parking adjacent

thereto. The building would be constructed in the BL-zoned portion of the property, and professional engineer Matt Bishop testified it is permitted by right in the zone and that no variances are required. The surface parking facility which would serve the new building is proposed for the R.O. zone portion of the property. Under the B.C.Z.R. the R.O. zone is considered “residential.” As such, Petitioner seeks special hearing relief to permit business parking in a residential zone, per B.C.Z.R. §409.8.

The regulations provide a list of requirements which must be satisfied prior to issuing a use permit for such a parking facility. Distilled to its essence, the applicable test is that set forth at B.C.Z.R. §502.1: whether the use will be detrimental to the health, safety or general welfare of the surrounding community. Based on the testimony in this case I believe the business parking in the R.O. zone would have at least some degree of detrimental impact upon the adjacent dwellings, whose owners object to the proposal. But, under Maryland law special exception uses are presumed to have some adverse impact upon the locality. While business parking in a residential zone is not a special exception use *per se*, B.C.Z.R. §409.8 expressly incorporates §502.1, and thus in sum and substance the analysis is the same.

Under Maryland law “the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” Schultz v. Pritts, 291 Md. 1, 22-23 (1981). In this case, protestants did not present any evidence to establish that the negative effects at this site would be above and beyond those experienced at any other R.O. zoned property. As such, I believe the use permit must be granted.

I understand and appreciate the concerns of the neighbors, but I am obliged to consider this request under the zoning regulations, which in my opinion have been satisfied. The community submitted a copy of a restrictive covenant agreement it entered into with Rosedale in 2008. Protestants' Ex. No. 3. The community believes Rosedale has reneged on its promises as set forth in that document, but as explained at the hearing the ALJ is not authorized to consider or interpret that private agreement. Blakehurst Life Care Community v. Baltimore County, 146 Md. App. 509 (2002). That is a matter for the circuit court for Baltimore County.

In addition, based upon a review of the opposition letters submitted by the community (Protestants' Ex. No. 2), the primary objection and concern voiced by the neighbors relates to the new building proposed, not the surface parking facility. As noted earlier, the proposed building is permitted by right in the B.L. zone and the Petitioner satisfies all height and setback requirements for the structure.

The only remaining issue concerns the ZAC comment submitted by the DOP. Therein, that agency suggested that the commercial corridor along Belair Road features parking in the side and rear of the buildings. But based upon the testimony of Bill Monk, and the photos submitted, I believe in fact that the businesses in the area have customer parking in the front of the stores. In addition, the subject property already has customer parking in front of the bank along Belair Road, and thus I respectfully disagree with the DOP's comment.

THEREFORE, IT IS ORDERED this **20th** day of November, **2015** by this Administrative Law Judge, that the Petition for Special Hearing pursuant to B.C.Z.R. § 500.7 to approve accessory parking in a residential (R.O.) zone to support a commercial use in a commercial (B.L.) zone, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its 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, Petitioner 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 filed within thirty (30) days of the date of this Order.

JEB:sln

____Signed_____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County