

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(9805 York Road & 9804 Monroe St.) *	OFFICE OF
8 th Election District	
3 rd Council District *	ADMINISTRATIVE HEARINGS
Ryan James Vaughan, et al, <i>Owners</i>	
Maryland Financial Realty, Inc. *	FOR BALTIMORE COUNTY
<i>Contract Purchaser</i>	
Petitioners *	Case No. 2016-0041-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 Ryan James Vaughan, et al, owners and Maryland Financial Realty, Inc., contract purchaser (“Petitioners”). The Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) for approval of business parking in a residential zone (DR 3.5). In addition, an amended Petition for Variance seeks the following: (1) to allow 31 off-street parking spaces in lieu of the required 62 parking spaces pursuant to §409.6.A.2; (2) to allow minimum setbacks from the tract boundary and minimum RTA buffers of 0 ft. and 6 ft. in lieu of the required 75 ft. and 50 ft., respectively; and (3) to allow parking spaces in a surface parking facility to be as close as 7 ft. to the right-of-way line of a public street for York Road. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the requests was Michael Albo on behalf of the contract purchaser. David H. Karceski, Esq. represented the contract purchaser. 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). A letter of opposition was received from Lindsay Johnson, President of County Home Park Community Association, Inc.

The subject property is 0.449 acres and zoned BL-CCC and DR 3.5. The property is presently improved with a commercial building (facing York Road) and a single family dwelling in the DR 3.5 zoned portion of the property. Petitioners propose to raze both structures and construct a new 3,800 sq. ft. 1-story retail building in place of the existing commercial structure and provide business parking on a surface lot where the dwelling is now located. To do so requires variance and special hearing relief.

Special Hearing

B.C.Z.R. §409.8.B permits under certain circumstances commercial parking in a residential zone. A Petitioner must establish the use will not be detrimental to the health, safety or general welfare of the community; i.e., a special exception standard under B.C.Z.R. §502.1. I believe Petitioner can satisfy that standard. The lot would accommodate only 14 vehicles, and modern lighting would be used to prevent “spillage” onto neighboring properties. In addition, the Petitioner would provide a privacy fence and landscaping along the border with Monroe Street, which would screen (at least partially) the proposed parking lot. In addition, Petitioners would be required to observe each of the restrictions/conditions enumerated in B.C.Z.R. §409.8.B.2. As such, the petition for special hearing 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 Ms. App. 691 (1995).

Petitioners have met this test, at least with respect to the variance requests pertaining to off-street parking. The lot is irregularly shaped and split-zoned. 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 in an economically advantageous fashion. Finally, I find that these 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.

But I do not believe Petitioners have satisfied the requirements for the variance request pertaining to the Residential Transition Area (RTA) buffers and setbacks. The requirements for variance of the RTA regulations are more stringent than in the ordinary variance case under B.C.Z.R. § 307. The regulations provide a specific rule for variance of RTA, as follows:

(1) Notwithstanding the provisions of Section 307, the hearing officer, upon the recommendation of the Departments of Public Works, Planning, Environmental Protection and Sustainability, Permits, Approvals and Inspections, Recreation and Parks, or Economic and Workforce Development, may determine the amount of RTA in cases where a single tract is more than two acres, is vacant, or contains no more than one single-family detached, semidetached or duplex dwelling.

(2) The RTA for a tract may be modified as directed by findings pursuant to § 32-4-402 and the hearing officer's hearing under Article 32, Title 4, Subtitle 2 of the Baltimore County Code. However, the hearing officer may not reduce the amount of RTA unless the officer specifically finds and determines that such a reduction will not adversely impact the residential community or development on the land adjacent to the property to be developed.

B.C.Z.R. §1B01.1.B.1.c.

In the present case, the DOP's ZAC comment cited subsection (1) quoted above and stated "that the amended plan provides an adequate RTA buffer." But the comment does not provide any additional details or site-specific facts that lend credence to the recommendation. In a recent decision the court of special appeals denied relief to a proposed church (which, unlike a commercial enterprise as in this case, enjoys an "exception to residential transition") under the RTA regulations. The court found that by failing to provide any RTA setback, the proposed church was not compatible with the adjacent neighborhood. I believe that logic applies here as well, where Petitioners similarly propose to provide no RTA setback.

The other subsection of the quoted regulation, B.C.Z.R. § 1B01.1.B.1.c(2), provides that the “hearing officer may not reduce the amount of RTA unless ... such a reduction will not adversely impact the residential community or development on the land adjacent to the property to be developed.” In this case, several community members testified they will in fact be adversely impacted by the variance of the RTA, and they feared encroachment of commercial development. They each mentioned problems caused by the restaurant which adjoins the subject property, which apparently has commercial parking immediately adjacent to Monroe Street, as proposed herein. While Mr. Bishop opined Petitioners satisfied B.C.Z.R. § 307, he did not provide testimony or render an opinion as to whether the community would be “adversely impacted” by the elimination of the RTA. As such, while the Petition for Variance will be granted for the majority of the requests, the variance request pertaining to the RTA will be denied for the reasons stated above.

THEREFORE, IT IS ORDERED this 21st day of October, 2015, 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.”) for approval of business parking in a residential zone (DR 3.5), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking the following: (1) to allow 31 off-street parking spaces in lieu of the required 62 parking spaces pursuant to §409.6.A.2; and (2) to allow parking spaces in a surface parking facility to be as close as 7 ft. to the right-of-way line of a public street for York Road, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to allow minimum setbacks from the tract boundary and minimum RTA buffers of 0 ft. and 6 ft. in lieu of the required 75 ft. and 50 ft., respectively, be and is hereby DENIED.

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