

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(12460 Dulaney Valley Road)	*	OFFICE OF
10 th Election District		
3 rd Council District	*	ADMINISTRATIVE HEARINGS
12460 Dulaney, LLC		
<i>Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner		
	*	Case No. 2016-0267-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 12460 Dulaney LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R): (1) To amend the site plan and Order approved in Case No. 1980-100-SPHA; (2) To approve a modified parking plan as more particularly shown on the site plan attached to the Petition for Special Hearing and Variance; (3) To confirm and permit existing and proposed business parking in a residential zone pursuant to B.C.Z.R. § 409.8 and as permitted in Case No. 1980-100-SPHA; (4) To allow non-conforming parking areas in a CR district; (5) To approve the location and setbacks on non-conforming structures; and (6) To permit a catering facility as an accessory use to a permitted standard restaurant use.

In addition, a Petition for Variance seeks: (1) To permit front yard building setbacks as little as zero ft. in lieu of the required 10 ft.; (2) As an alternative to the Petition for Special Hearing, to permit 122 parking spaces in lieu of the required 412 parking spaces; and (3) As an alternative to the Petition for Special Hearing, to permit overflow valet and employee parking to be located on a nondurable and dustless surface in lieu of the durable and dustless surface

required and to permit a drive aisle as little as 18 ft. in lieu of the required 20 ft. and parking spaces less than 8.5 ft. x 18 ft.

Appearing at the public hearing in support of the requests were Kehar Singh and professional engineer Richard Matz. Lawrence E. Schmidt, Esq. represented the Petitioner. Several area residents attended the hearing to obtain additional information regarding 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), Bureau of Development Plans Review (DPR) and Department of Environmental Protection and Sustainability (DEPS).

The Peerce's Plantation restaurant is located on the subject property. According to witnesses, this restaurant was something of an institution in this area, and it operated for over 30 years at this location. The restaurant has been closed for over 1 ½ years, and Mr. Singh (who operates several successful restaurants in the Baltimore metro area) has purchased the property and plans to undertake substantial renovations to the existing building and reopen the restaurant, which will again be known as Peerce's Plantation.

While the ownership of the business will change, the restaurant use will continue in largely the same fashion as it has in the past. The vast majority of the work will be on the interior, and while the exterior appearance will be enhanced and updated, the footprint of the restaurant building will not be enlarged. Even so, the existing parking is deficient under the B.C.Z.R., and certain setbacks are also nonconforming. In addition, Petitioner will host weddings and similar events at the restaurant and the zoning office suggested special hearing relief was necessary to approve this as an accessory "catering" use. These, then, are the items for which zoning relief is sought.

SPECIAL HEARING

As noted above, the bulk of the special hearing requests seek to “legitimize” existing nonconforming conditions and setbacks at the site. These conditions have existed for 30+ years, and have not had a detrimental impact upon the community. Two requests pertain to off-street parking, and those will be addressed as variances rather than through the special hearing petition.

The final special hearing request concerns the “catering” that is proposed as an accessory use to the standard restaurant. It is important to note the catering to be offered here will be unlike the operation of a sprawling facility like Martin’s West or similar venues. Petitioner explained he will host weddings, parties and family celebrations at the restaurant. Many restaurants in the Baltimore area provide similar services, and in that regard I believe the use is customary and will contribute to the overall operation of the Peerce’s Plantation restaurant. As such, it qualifies under the Regulations as a valid “accessory use,” and the petition will therefore be granted.

VARIANCE

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).

Petitioner has met this test. The property is irregularly shaped and has three different zoning classifications: RC 6, BL-CR and BL. As such the property is unique. Petitioner would experience practical difficulty if the regulations were strictly interpreted because it would be unable to complete the proposed improvements necessary to operate the restaurant. 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. This is demonstrated by the lack of County and (for the most part) community opposition.

One note is in order regarding variance request No. 2, pertaining to the number of off-street parking spaces required. Mr. Matz explained the County includes in the square footage calculation under B.C.Z.R. §409 all of the patio and outdoor seating areas. Using that formula, 412 spaces are required, which seems quite excessive for a restaurant of this nature. That is especially the case where, as noted by Mr. Singh, the outdoor seating would be utilized for only a few months every year. As such, regardless of the numbers referenced in the Petition, the parking at the restaurant will function in much the same way as it has for the past 30 years, and there is no indication there was ever an overflow or traffic congestion associated with a lack of parking at the facility.

While most of the community members in attendance were supportive of the requests, there was some concern regarding traffic conditions at the site. Specifically, Dulaney Valley Road makes a sharp turn and continues past the site, although there are no stop signs or other traffic calming measures. In addition, the restaurant building has no setback from the front yard property boundary, which arguably impacts the sight lines for motorists. In fact, the building, concrete patio and other structures bordering Dulaney Valley Road encroach upon land owned by Baltimore City, and Petitioner indicated it will soon acquire this land after approval by the City Council. Ex. 9, Council Bill.

Of course, it would be inequitable to suggest the existing building be razed or relocated. Based on a review of the photographs and Mr. Matz' testimony, I believe a 3-way stop sign at the intersection of Loch Raven Drive and Dulaney Valley Road would improve traffic safety in this area. While the undersigned does not have authority to order such improvements be made, a copy of this Order will be provided to the Baltimore County Department of Public Works (DPW) along with a request they evaluate what, if anything, could be done to improve this intersection.

THEREFORE, IT IS ORDERED this 15th day of **July, 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."): (1) To amend the site plan and Order approved in Case No. 1980-100-SPHA in accordance with the plan (Exhibit 1) submitted in this case; (2) To confirm and permit existing and proposed business parking in a residential zone pursuant to B.C.Z.R. Section 409.8 and as permitted in Case No. 1980-100-SPHA; (3) To allow non-conforming parking areas in a CR district; (4) To approve the location and setbacks on non-conforming structures; and (5) To permit a catering facility as an accessory use to a permitted standard restaurant use, be and is hereby GRANTED.

IT IS FURTHER ORDERED the petition for variance seeking: (1) To permit front yard building setbacks as little as zero ft. in lieu of the required 10 ft.; (2) To permit 122 parking spaces in lieu of the required 412 parking spaces; and (3) To permit overflow valet and employee parking to be located on a nondurable and dustless surface in lieu of the durable and dustless surface required and to permit a drive aisle as little as 18 ft. in lieu of the required 20 ft. and parking spaces less than 8.5 ft. x 18 ft., 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, Petitioners would be required to return the subject property to its original condition.

2. Petitioners must comply with the ZAC comments of the DEPS and DPR, copies of which are attached hereto.
3. Prior to issuance of permits Petitioner must submit for approval by the DOP elevations of the building facades adjacent to Dulaney Valley Road.

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