

IN THE MATTER OF  
KIM HAMMOND, Legal Owner/Petitioner  
6314 Falls Road  
Baltimore, MD 21209

RE: Petition for Parking Variance

\* BEFORE THE  
\* BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* Case No. CBA-13-265-SPHA

\* \* \* \* \*

### OPINION

This case comes to the Board on appeal of the final decision of the Administrative Law Judge ("ALJ") in which the ALJ granted the Petitioner's request for Special hearing relief pursuant to Baltimore County Zoning Regulations ("B.C.Z.R.") §500.7 to approve an amended site plan for Case No.: 86-256-A and to approve a modified parking plan for an existing parking facility. Additionally, the ALJ approved the Petitioner's request for a variance to approve a 10' side yard setback in lieu of 30' and to approve a reduction of 200' setback imposed by Baltimore County Zoning Regulations ("BCZR")§421. 2.

A public hearing was held before this Board on October 13, 2013. The Petitioner, Kim Hammond, (the "Petitioner") was represented by J. Carroll Holzer, Esquire. The Protestant, Peter Belitsos was represented by Vernon Boozer, Esquire. Jessica Shuler, another Protestant was *pro se*. A public deliberation before this Board was held on November 7, 2013.

### Evidence

The Petitioner is the legal owner of the property located at 6314 Falls Road, Baltimore, MD 21209 (the "Property"), having purchased the same on April 20, 1982. (Pet. Ex. 7). The Property is zoned commercially as "BR". (Pet. Ex. 4). The Property is surrounded on all sides by either business or industrial zones. (Pet. Ex. 4). It sits on the west side of Falls Road and the north side of Shoemaker Road. (Pet. Ex. 2). The Property is 1.093 acres (47,628 sf.). It is

improved with a two-story building with a basement. Originally constructed as a house, it has been used as animal hospital, kennel and offices since 1954.

The Petitioner is seeking alternative forms of relief namely that this Board (1) approve an Amended Site Plan for a two-story addition with a modified parking plan; and/or (2) grant a variance for rear and side yard setbacks. The Petitioner concedes that if this Board grants the Amended Site Plan than it has, in effect, granted the variance relief.

Testifying as an expert for the Petitioner was Steven K. Broyles, P.E., surveyor and land planner, who was qualified as an expert in the areas of zoning, land planning, site engineering and acoustic engineering. Mr. Broyles has previously testified as an expert before this Board and the Circuit Court for Baltimore County.

With regard to proposed second story addition and parking plan, Mr. Broyles drafted an Amended Site Plan (the original Site Plan having been drafted in 1986; Case No.: 86-256A): (Pet. Ex. 2A). Mr. Broyles explained that the additional space was needed to dispense prescription drugs for the animals because new USDA regulations require strict controls on medications. As such, the second floor would be designed with pneumatic tubing which would send the prescriptions directly to the patient rooms. This system eliminates the number of people handling the prescriptions which ultimately prevents diversion and shrinkage. As of the hearing date, the Petitioner currently has 5 employees on 3 shifts for a total of 15 employees handling prescriptions. With the pneumatic tubing system, the Petitioner would only need 1 employee to receive orders and to dispense medicine.

Due to the size of the lot and existing improvements, a second story addition was the only feasible option. The addition will measure 2,816 sf. (Pet. Ex. 2A). When added to the existing floor area of the building, the total equals 19,781 sf. (Pet. Ex. 2A). The existing footprint of the building will not change.

The zoning history for the Property reflects that on December 20, 1985, in Case No. 86-256-A, the Petitioner was granted a 10' side yard setback and a 0' rear yard setback in lieu of the required 30' for a BR zone. Mr. Broyles confirmed that the proposed addition will not change the dimensions for the 1986 setback variance and thus Petitioner is requesting to continue using the 1986 setbacks.

Mr. Broyles opined that as it relates to the 1986 variance, the Property became nonconforming in 1987 when a 200' setback from the property line was imposed by regulation under BCZR §421.2 for any animal boarding facility, kennel or pet shop. Thus, this Property would have to be 400 x 400 to comply. It only measures 200x200. As a result, he testified that if the same setback variance were not granted by this Board, as was in 1986, the Property, which has existed as an animal hospital since 1954, would be unusable.

Mr. Broyles testified that a variance is warranted because the Property is unique for zoning purposes. The contiguous properties are zoned ML or MLR. It is the only Property along Falls Road with direct access to Falls Road. Because of its use, special regulations under BCZR §421.2 apply to this use as an animal hospital that do not apply to other BR zoned properties in the neighborhood. To comply with the 200' setback would require the Petitioner to cease and desist its business. The Property is also unique as it is the only property in the neighborhood with 10' Class A landscaping. The landscaping provides a buffer on 3 sides. This strict compliance with the law creates a practical difficulty and an undue hardship on the Petitioner.

With regard to the modified parking plan, on the Site Plan, Mr. Broyles calculated the required number of parking spaces as 60 and he testified that the Petitioner has 70 spaces. (Pet. Ex. 2A). Mr. Broyles explained that there is in effect a 99-year lease which is still in effect (the "Lease") (Pet. Ex. 8). He verified through his research that even if the Property was sold that the

Lease would continue. Further, the Petitioner has ingress and egress rights to Shumaker Rd. and a maintenance agreement is in effect for the entire length thereof.

The proposed parking plan will not disturb the existing asphalt as there will no new paving, only restriping of certain spaces. Specifically, Mr. Broyles pointed out that there are 7 hatched spaces at the entrance of Falls Road and Shumaker Road into the Property. (Pet. Ex. 6A). Those spaces currently impede ingress and egress. They will be restriped so that there will be 3 perpendicular spaces. Even doing so, the required number of spaces is still met. Reducing the number of employees will serve to reduce traffic and create a better flow of vehicles in the parking lot.

On cross examination, Mr. Broyles added that the basement of the building will be used for storage which does not affect the parking calculations. He further explained that there are kennels with roofs but those kennels do not require a setback from the property line.

Testifying in opposition was Jessica Schuler who owns 6305 Falls Rd., which is directly across the street from the Property. It is a retail site. She testified that she is concerned that the new second story addition will cause: (1) parking problems; (2) motor vehicle accidents; (3) pollution; and (4) hardship with her tenants who operate businesses. She stressed that she has tenants leave due to the noise generated by the animals. She agreed to the 1986 addition to the Property but the noise problems began in 1987. She added that in 2000 a wood structure was erected on the Property and the County required the Petitioner to obtain a building permit in June of 2001. She believes that the 40 foot kennel was added illegally. She questioned the ownership of the masonry wall/fence around the Property.

On September 24, 2013, she witnessed that an ambulance and fire truck had difficulty pulling into and out of the Property due to parking problems and submitted photographs of the same. (Prot. Exs. 3A – 3G). She is concerned that the noise level will escalate due to the parking

deficiencies. Ms. Schuler has witnessed numerous motor vehicle accidents over the years and the parking issues will only increase this danger.

Also testifying in opposition was Peter Belitsos, the owner of the adjacent property, 6302 Falls Road, which is on the south side of Shumaker Road. He agreed that he and the Petitioner share 6 spaces along the side of Shumaker Road. However, he said that this leaves the Petitioner with at best 3 spaces. He pointed out the Petitioner does not actually have 61 spaces because the parking is first come-first serve due to the shared parking arrangement.

Mr. Belitsos testified about a video that he took of the parking problems he experiences. Delivery trucks going to the Property pull into his property and then turn around. (Prot. Ex. 4). In addition, customers of the Petitioner park on his lot. As a result, Mr. Belitsos has put up signs to warn patrons not to park on his lot. He insists that this ongoing problem causes safety issues. He is concerned that a new addition will increase traffic. He has spent over \$100,000.00 renovating his building and has leased out the space in his building. However, his tenants complain about not only parking issues but the noise level from the animals. Mr. Belitsos was emphatic that more construction will generate more traffic problems for a site that is already non-conforming.

On re-direct, Mr. Broyles clarified that he reviewed the County files and that there were no open violations for the Property. With regard to potential motor vehicle accidents, State Highway Administration did not provide an comments much less negative ones. With regard to the noise level, Mr. Broyles conducted an acoustic assessment on June 24, 2013 and determined that the noise from Falls Road is actually louder than the noise from the kennel. Moreover, he highlighted that Baltimore County does not have a noise regulations for commercial properties, only regulations for noise from residential properties.

With regard to parking along Shumaker Road, his research confirmed that the Petitioner has clear use of 6 spaces and that he has been using those 6 spaces for at least 20 years. Accordingly, Mr. Broyles believes that this is a prescriptive use.

Law

BCZR §421.2 applies to animal boarding places, kennels and pet shops in office, business and manufacturing zones and reads as follows:

If an animal boarding place, commercial kennel, private kennel or pet shop is allowed in an office, business or manufacturing zone, either as a special exception or as a permitted use, any part of the use, including but not limited to exercise areas, septic systems, dog runs and parking areas, may not be located within 200 feet of the nearest property line or lease line.

In order for a setback variance to be granted, this Board must be convinced that the Petitioner has met its burden of proof as to both “uniqueness” and “hardship”. Section 307.1 of the BCZR states, in pertinent part, as follows:

“(T)he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area...regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare....”

This Board is guided by the holding provided by the Court of Special Appeals in *Cromwell v. Ward*, 102 Md. App. 691, 698 (1995), wherein the Court writes:

...The Baltimore County ordinance requires "conditions ...peculiar to the land...and...practical difficulty...." Both must exist. ...However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of that piece of

property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when the uniqueness is first established that we then concern ourselves with the practical difficulties...."

In requiring a finding of "uniqueness", the Court of Special Appeals in *Cromwell* referred to the definition of "uniqueness" provided in *North v. St. Mary's County*, 99 Md. App. 502, 514 (1993):

In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects in bearing or parting walls....

*Id.* at 710.

If the Property is determined to be "unique," then the issue is whether practical difficulties also exist. Toward this end, the Board acknowledges that a variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. *McLean v. Soley*, 270 Md. 208 (1973).

However, the law is clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell*, *supra*, Judge Cathell noted:

Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

*Id.*, at 722.

#### Decision

After reviewing all of the testimony and evidence presented, the Board has determined that the Petitioner has met its burden of proving that the Amended Site Plan should be approved pursuant to BCZR §500.7 for a second story addition to the existing building with a modified parking plan. This Board also finds, based on the evidence as set forth herein that the Property is unique and that the Petitioner will suffer practical difficulty and unreasonable hardship if the setback variance is not granted.

As to uniqueness, the Board finds, based on the evidence, that this Property has inherent characteristics which are not shared by other properties in the neighborhood. At the outset, it is clear to this Board that compliance with new USDA regulations which govern animal hospitals/kennels is driving the Petitioner's request here for a second story addition. But-for the federal drug regulations designed to address theft of prescriptions, the Petitioner would continue operating as it has since the 1986 addition was built. However, due to the unique site constraints of existing improvements and small property size, the Board agrees that building upward was the only feasible means of providing the controlled area for dispensing medications.

The Board finds, based on the evidence that the unique features of the Property under *Cromwell, supra* include: the location of the site (Pet. Ex. 6A); the only property along Falls Rd. with access to Falls Rd. (Pet. Ex. 6A); a BR zoned property surrounded by ML or MLR properties (Pet. Ex. 4); the only Property with vegetative buffer on 3 sides (Pet. Exs. 6A and 9) and 10' Class A landscaping; the only BR zoned property in neighborhood that must comply with the 200' setback due to its existing use as an animal hospital; and the historic use as an animal hospital for the last 59 years. While the zoning regulations have changed, the configuration of the buildings has been the same for the last 27 years.

The Board further finds significant that there will not be an enlargement of the Property footprint and there will be no new paving or disturbance of existing asphalt under the proposed



modified parking plan. The aerial photograph submitted by the Petitioner (Pet. Ex. 6A) gives a snapshot of the already existing tight constraints on the Property. However, the Petitioner's proposed modified parking plan provides some relief in the elimination by restriping of the 7 hatched spaces which are an obstacle to ingress and egress onto Shumaker and York Rds.

Contrary to the Protestants' testimony, the Board does not find a direct correlation between the proposed second story addition or parking modification plan and the amount of noise generated by the animals at the facility. As Mr. Broyles pointed out, the noise level is not in violation of State noise regulations. Moreover, he emphasized that there are no County regulations to address noise generated by commercial properties. As a result, this Board cannot find, based on the evidence, that approving the Amended Site Plan, including the modified parking, or granting the setback variances is in contradiction of the zoning regulations.

This Board also does not find that approving a modified parking plan will increase, as Mr. Belitsos suggested, the issues he has experienced with delivery trucks or customers coming to the Petitioner's business and either turning around or parking on his lot. While this is certainly annoying to Mr. Belitsos and his tenants, Mr. Belitsos' action in erecting "No Parking" signs is appropriate and reasonable.

Due to the unique features of the Property as above, BCZR§421. 2 disproportionately impacts this established business that began in a residence before such current setbacks were required. Therefore, we find that compliance with BCZR§421. 2 would be practically difficult. Denying such relief would also cause unnecessary hardship on the Petitioner in that the business could not comply with federal drug regulations without the second story edition and at the same time continue the historic use as an animal hospital. We note that there was no evidence presented by the Protestants by way of expert testimony as to any feasibility study or other evidence which would suggest another viable use for the Property.

ORDER

THEREFORE, IT IS THIS 28<sup>th</sup> day of January, 2014, by the


Board of Appeals of Baltimore County

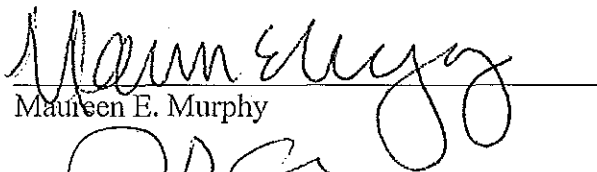
**ORDERED** that the Petition for Special Hearing under BCZR §500.7 to approve the Amended Site Plan in Case No.: 85-256-A and to approve a modified parking plan for an existing parking facility. be and the same is hereby **GRANTED**; and it is further,

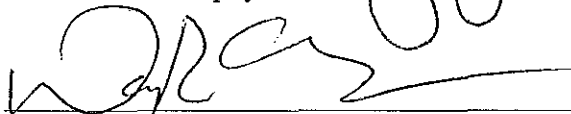
**ORDERED** that the Petitioner's request for variance to approve a 10' side yard setback in lieu of 30' and to approve a 0' setback in lieu of the required 200' setback imposed by Baltimore County Zoning Regulations ("BCZR")§421. 2 as the same relief was granted in Case No.: 85-256-A be and the same is hereby **GRANTED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS  
OF BALTIMORE COUNTY**

  
Andrew M. Belt, Panel Chairman

  
Maureen E. Murphy

  
Wayne R. Gioioso, Jr.