

**IN THE MATTER OF:  
CGX LIFE SCIENCES, INC.  
LEGAL OWNERS**

**PETITIONS FOR  
SPECIAL HEARING  
AND VARIANCE**

**4<sup>th</sup> Election District  
3<sup>rd</sup> Council District**

**\* BEFORE THE  
\* BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\*  
\* Case No. 2017-0302-SPHA  
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**OPINION**

This matter comes before the Board of Appeals as a *de novo* appeal from the July 13, 2017 and August 21, 2017 decisions of the Baltimore County Administrative Law Judge (“ALJ”). In his July 13, 2017 decision, the ALJ denied the petitions filed by CGX Life Sciences, Inc. (the “Petitioner”). Petitioner filed a Motion for Reconsideration, which the ALJ denied on August 21, 2017. Petitioner filed an appeal of the ALJ decisions to this Board.

The Board held a public hearing and publicly deliberated on June 12, 2018. During the proceedings before the Board, David H. Karceski and Adam M. Rosenblatt of Venable LLP represented the Petitioner. Bill Huber, General Manager of Maryland Operations for the Petitioner, and Patrick Richardson, Jr., Engineer for the Petitioner, appeared in support of the petitions. Carole Demilio, Esquire appeared on behalf of People’s Counsel for Baltimore County. There were no protestants or other interested citizens in attendance at the hearing.

At the outset of the hearing, Mr. Karceski explained that the Petitioner worked with certain County reviewing agencies and the Office of People’s Counsel between the ALJ hearings and the hearing before the Board to revise and reduce the relief requested in these petitions. A site plan reflecting the revised relief was marked and accepted into evidence as Petitioner’s Exhibit 1. As

the Plan reveals, the relief being sought by the Petitioner was reduced to the following: Special Hearing pursuant to BCZR Section 409.8.B.1 to permit business parking in a residential zone (DR 10.5); and Variance from Section 409.4.C for a one-way drive aisle of 12.25 feet in lieu of the required 16 feet for 60 degree angled parking spaces. People's Counsel had no objection to Petitioner revising the requested relief, which can be characterized as a "lesser included" version of the original zoning petition. As such, the Board was satisfied that the petition did not constitute a substantive change requiring a separate petition, notice and hearing at the ALJ level. *See e.g. McLean v. Soley*, 270 Md. 208 (1973).

#### BACKGROUND

The property at issue in this case is known as 7458 German Hill Road and is located in the Dundalk area of Baltimore County (the "Property"). The Property contains approximately .344 gross acres of land that is split-zoned with the southern half of the Property zoned BL and the northern half zoned DR 10.5. A two-story commercial brick building, which was originally constructed in 1955, is centrally located on the Property. Vehicular access is provided off of German Hill Road for parking spaces along the Property's frontage. An existing drive aisle along the western side of the Property provides access to additional parking spaces in the rear of the Property in the DR 10.5 zone. An aerial photograph marked and accepted as Petitioner's Exhibit 4 confirms that the Property is surrounded by a cemetery to the south, a convenience store to the west, a county park to the north, and townhomes and an alley to the east. Additional Photographs of the Property and surrounding area were marked and accepted into evidence as Petitioner's Exhibit 5.

At the hearing, Petitioner submitted both its revised site plan (Exhibit 1) and the site plan originally presented to the ALJ in this case (Exhibit 3). When originally presented, Petitioner

was seeking zoning relief to allow a medical cannabis facility on the Property. Petitioner initially sought general variance relief from Baltimore County's landscape manual and an additional variance for a deficiency in the drive aisle along the western side of the Property that was to be caused by a proposed addition to the existing building. *See* Exhibit 3. As reflected in the Board's file, the Department of Planning and Development Plans Review Bureau issued Zoning Advisory Committee (ZAC) comments opposing the requested relief.

After the ALJ proceedings, Petitioner selected another location for the proposed medical cannabis dispensary and is no longer seeking relief to permit that use on the Property. Note 30 on the revised site plan confirms that the Property will be used for any use permitted in the BL zone with the exception of a medical cannabis dispensary. *See* Exhibit 1, Note 30.

Petitioner also removed two of the variances initially sought in this case. First, the proposed additions to the building were eliminated, keeping the drive aisle along the western side of the Property in compliance with the circulation requirements contained in BCZR § 409. Second, Petitioner worked with the County's landscape architect to obtain approval of a final landscape plan, thereby eliminating the need for any zoning relief related to landscape plantings. A copy of the approved final landscape plan was marked and accepted into evidence as Petitioner's Exhibit 6.

With respect to the variance relief that is currently being sought, the Petitioner worked with the Department of Planning to reconfigure the front of the Property to create a one-way drive-aisle along the Property's frontage to serve five parking spaces. Variance relief is required to permit the resulting drive aisle to be a width of 12.25 feet in lieu of the required 16 feet. This relief is being sought from BCZR § 409.4.C, the same section that was at issue in the petition initially filed with the ALJ. Revised ZAC comments from the Department of Planning and

Development Plans Review Bureau were marked and accepted into evidence as Petitioner's Exhibit 7A-B. The revised comments confirm that the agencies reviewed the revised layout and relief and have no objection to the petitions for special hearing and variance. While Ms. Demilio appeared at the hearing, the Office of People's Counsel did not express any opposition to the requested relief.

## DECISION

### **I. Special Hearing**

Petitioner requests special hearing relief to use the parking spaces in the rear of the Property that is zoned DR 10.5 for business parking. This request is governed by BCZR § 409.8.B, which requires compliance with a number of factors, including the objectives outlined in BCZR § 502.1. Testimony was provided by Patrick Richardson, Jr., a professional engineer who was accepted as an expert in the BCZR as they pertain to the requested relief. Mr. Richardson's resume was marked and accepted into evidence as Petitioner's Exhibit 2.

Mr. Richardson testified that the Property has functioned in its current configuration for many years. In accordance with BCZR § 409.8.B.1.e(2), he does not believe that the parking spaces in the rear of the Property in the configuration shown on Petitioner's Exhibit 1 will have any impact on the surrounding community. The intended removal of an existing shed in the northeast corner of the Property and installation of landscaping along the eastern and northeastern sides of the Property will improve the view for residents to the east of the Property. Again, the remaining adjacent uses include a park, cemetery, and convenience store, which will not be impacted by the use of the rear of this Property. In fact, the two commercial properties to the west of the Property are similarly split-zoned and utilize all of their land for commercial purposes.

Mr. Richardson added Note Nos. 24-29 to the site plan to address the requirements contained in BCZR § 409.8.B.2. Specifically, the site plan confirms that the parking spaces in the rear of the Property will only be used for passenger vehicles. The loading space is located on the west side of the existing building outside of the residential zone. No loading or servicing will take place in the rear of the Property. With respect to lighting, all proposed lighting fixtures will be located and arranged to reflect light away from the adjacent residential properties, and a lighting plan will be reviewed and approved by Baltimore County. As the site plan indicates, the hours of operation for the proposed business will be from 7:00 a.m. – 11:00 p.m.

Mr. Richardson also testified that he is familiar with the requirements of BCZR § 502.1 and believes that this petition satisfies all applicable requirements. Mr. Richardson confirmed that the proposed use will not have any negative impact on the surrounding area, and the Board concurs.

Based on the testimony and evidence presented at the hearing, the Board is persuaded to grant the requested relief. This request legitimizes existing conditions of the Property and allows the Petitioner to use the Property for commercial purposes.

## **II. Variance**

Petitioner seeks variance relief to permit a one-way drive aisle along the front of the Property to be a width of 12.25 feet in lieu of the required 16 feet. The Court of Special Appeals has set forth the two-step process for considering a request for a variance:

The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is - in and of itself - unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. Unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is

taken in the process, i.e., a determination of whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance caused by the property's uniqueness, exists.

*Cromwell v. Ward*, 102 Md. App. 691, 694-95 (1995).

The Board concludes that the Petitioner has satisfied the requirements established in *Cromwell* to obtain the variance. Specifically, the Property is irregularly shaped and adjoins German Hill Road on an angle, making it difficult to design a drive aisle that meets the requirements of the BCZR. Testimony confirmed that the size and location of the building make it virtually impossible for the Petitioner to make any use of the front of the Property absent a variance. The reconfigured one-way drive aisle, which was reviewed by the Department of Planning, minimizes the requested variance relief and provides safe and effective use of the Property's frontage. This appears to be a case where a building was constructed in the 1950s and the current, more stringent regulations have a disproportionate impact on the Property. Accordingly, the Board finds that a practical difficulty will result if the variance is denied, and that the variance is in the spirit and intent of the BCZR and can be granted without having any negative impact on the health, safety, and welfare of the surrounding community.

**ORDER**

**THEREFORE IT IS THIS** 13<sup>th</sup> day of July, 2018 by the  
Board of Appeals of Baltimore County:

**ORDERED** that the Petition for Special Hearing pursuant to BCZR Section 409.8.B.1 to permit business parking in a residential zone (DR 10.5) be and is hereby **GRANTED**; and it is further

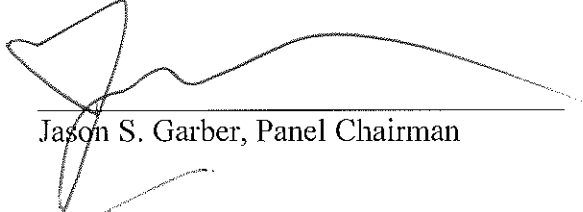
**ORDERED** that the Petition for Variance from Section 409.4.C for a one-way drive aisle of 12.25 feet in lieu of the required 16 feet for 60 degree angled parking spaces be and is hereby **GRANTED**.

The relief granted herein is subject to the following conditions:

- a. Any and all dumpsters shall be located on the western half of the Property and, if reasonably practical, in the BL-zoned portion of the Property. Similarly, any and all dumpster/recycling service and/or collection shall occur on the western half of the Property and, if reasonably practical, in the BL-zoned portion of the Property.
- b. A lighting plan must be reviewed and approved by the Landscape Architect for Baltimore County or his designee. Townhome lots are located to the east of the Property and the Landscape Architect should be aware of these residential lots during his review and approval of the lighting plan.
- c. The site shall not be used for a medical cannabis dispensary.

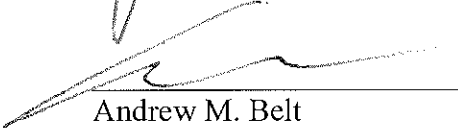
Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS  
OF BALTIMORE COUNTY**



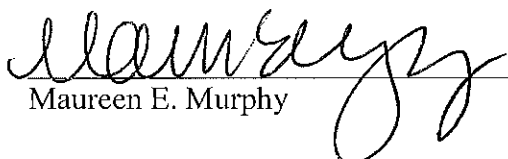
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Jason S. Garber, Panel Chairman



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Andrew M. Belt



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Maureen E. Murphy



## Board of Appeals of Baltimore County

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July 13, 2018

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RE: In the Matter of: *CGX Life Sciences, Inc.*  
Case No.: 17-302-SPHA

Dear Counsel:

Enclosed please find a copy of the Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington Hay".

Krysundra "Sunny" Cannington  
**Administrator**

KLC/taz  
Enclosure  
Duplicate Original Cover Letter

c: CGX Life Sciences, Inc.  
Lawrence M. Stahl, Managing Administrative Law Judge  
Andrea Van Arsdale, Director/Department of Planning  
Arnold Jablon, Deputy Administrative Officer, and Director/PAI  
Nancy C. West, Assistant County Attorney/Office of Law  
Michael E. Field, County Attorney/Office of Law