

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE – S/S Stevenson Lane,	ZONING COMMISSIONER
160' E of c/line of Oxford Road *	
(531 Stevenson Lane)	OF
9 th Election District *	
5 th Council District *	BALTIMORE COUNTY
PV Realty – Holly Hill, LLC *	Case No. 2009-0328-SPHA
<i>Petitioner</i> *	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by Stephen P. Bellone, on behalf of the owner of the subject property, PV Realty – Holly Hill, LLC, by and through its attorneys, Robert A. Hoffman, Esquire and David Karceski, Esquire with Venable LLP. The Petitioner requests a special hearing to authorize an amendment to the Order and site plan approved in Case No. 67-66-SPH. In addition, variance relief is requested¹ from Section 1B01.1.B.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a residential transition area setback a minimum of 69 feet from the rear (south) property line for a building addition in lieu of the required 75 feet; to permit a residential transition area buffer and residential transition area setbacks a minimum of 42 feet from the rear (south) property line and 25 feet from a side (east) property line for new off-street parking in lieu of the required 50 foot residential transition area buffer and 75 foot residential transition area setback; to allow existing site improvements, including accessory structures and off-street parking within the 50 foot residential transition area buffer and 75 foot residential transition area (RTA) setback, and finally from Section 409.4.A of the B.C.Z.R. to

¹ At the suggestion of the Zoning Review Office and out of an abundance of caution, Petitioner requested variance relief from the requirements of the Zoning Regulations in the event this relief is determined to be *necessary* by this Commissioner during the course of the hearing.

allow existing driveway width of 15 feet for two-way movements in lieu of the required 20 feet. The subject property and requested relief are more particularly described on a one-sheet, redlined site plan, which was submitted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the requests were David H. Karceski, Esquire and Arnold Jablon, Esquire with Venable, LLP, counsel for Petitioner. Appearing in support of the Petitions were Stephen P. Bellone on behalf of Persimmon Ventures, LLC and Holly Hill Nursing Home; Douglas L. Kennedy, with KCW Engineering Technologies, Inc., the engineering firm responsible for preparation of Petitioner's site plan; Randy M. Sovich, with R.M. Sovich Architecture, the architecture firm for the project, and John ("Jack") G. Leonard, the landscape architect for the project. Edward J. Gilliss, Esquire appeared as counsel for the Stoneleigh Community Association, Inc. and certain individual property owners in the vicinity of the subject property. Specifically, the individual property owners represented by Mr. Gilliss were Eugene Flynn (700 Hatherleigh Road), Andrew Kahn (702 Hatherleigh Road), Andrew Whitman (704 Hatherleigh Road), Michael Smith (706 Hatherleigh Road), Helen Couch (708 Hatherleigh Road), and Charles Drake (800 Hatherleigh Road). In addition, Kevin Rimlinger, legal owner of 601 Stevenson Lane, also appeared as an interested neighbor and member of the Wiltondale Improvement Association. Mr. Rimlinger's property is located adjacent to and east of the subject property. There were no Protestants in attendance, and, without objection, the public hearing proceeded on a proffer from Mr. Karceski and Mr. Jablon in combination with testimony provided by Petitioner's witnesses.

Preliminarily, Petitioner's counsel and Mr. Gilliss indicated that the Stoneleigh Community Association, and the individual property owners represented by Mr. Gilliss, had entered into a written agreement with the Petitioner regarding the proposed building addition and the other related site improvements shown on Exhibit 1. Mr. Gilliss informed this Commission

that, based upon the terms of this agreement, his clients were in support of all of the requested zoning relief and approval of the redlined site plan (Petitioner's Exhibit 1). A joint request was made by Petitioner's counsel and Mr. Gilliss for the agreement to be made a part of the order issued by the undersigned Commissioner.

The testimony and evidence offered disclosed that the subject property is approximately 2.2 acres, more or less, and located adjacent to and on the south side of Stevenson Lane just east of York Road, in the Towson area of Baltimore County. The site is of an irregular shape, zoned D.R.5.5 (Density, Residential), and has been utilized as a convalescent home for many years. By way of brief history, in Case No. 3969-X, a special exception was granted for the operation of a convalescent home on the property in 1958. The original building used for the convalescent home is located in close proximity to Stevenson Lane and is labeled "*ORIGINAL MANSION 3-STORY*" on Petitioner's Exhibit 1. Subsequent to the 1958 Case, a petition for special hearing was granted in Case No. 67-66-SPH for an addition onto the original structure. This addition, which is labeled "*3-STORY (1969 ADDITION)*" on Petitioner's Exhibit 1, was built onto the rear façade of the original structure and extends in a perpendicular direction toward the site's south (rear) property line.

The variance and special hearing relief requested in the instant case pertains to a building addition Petitioner now proposes in the rear yard of the property within the area, labeled "*PROP. ADDITION 3-STORY + BASEMENT*" on Petitioner's Exhibit 1, and other related site improvements. The present application would allow for an increase in the size of the existing convalescent home from its present number of beds to one capable of caring for a maximum of eighty-five (85) residents. Additionally, with this enlargement of the building, Petitioner plans to make numerous upgrades to the interior of the existing facility for the benefit of its residents, without which this convalescent home would become obsolete. Administrative Offices to

support Petitioner's operations will remain on the property and also benefit from the comprehensive facility upgrades planned. It is the additional beds that will provide income for Petitioner to complete the intended facility upgrades.

As shown on Petitioner's Exhibit 1, the building addition will be parallel to the site's south property line, no closer than sixty-nine (69) feet from the south property line and no closer than seventy-eight (78) feet from the west side property line. Other related site improvements include additional off-street parking spaces and adjusted site circulation to accommodate the new parking spaces. Petitioner's Exhibit 1 does not provide a location for a storm water management facility in connection with the building addition. Petitioner's intention is to construct an underground facility for the building addition, provided the Department of Environmental Protection and Resource Management (DEPRM) approves a location and underground design for the facility. The Stoneleigh Community Association and the individual neighbors represented by Mr. Gilliss, through Mr. Gillis, stated their preference for a below grade facility. The agreement between Petitioner and Mr. Gillis' clients (Petitioner's Exhibit 9) provides that Petitioner will install a below grade facility if approved by DEPRM. Petitioner's Exhibits 8A and 8B are the preliminary colorized building elevations for the proposed addition, which Petitioner introduced for illustrative purposes. This exhibit shows the location of the building addition in relation to the site's existing structure and the types of building materials Petitioner has selected for the addition. Petitioner's Exhibit 7 is a realistic landscape plan, which shows approximate locations for supplemental landscaping on the property in the vicinity of the building addition. A review of Petitioner's Exhibit 7 indicates that Petitioner intends to install supplemental landscaping along the site's western, southern, and eastern property lines in the vicinity of the building addition. It is important to note that Mr. Gilliss' individual clients' properties are located

immediately to the south of the subject property and Mr. Rimlinger's property immediately to the east so these individuals stand to benefit the most from this additional landscaping.

Petitioner first addressed the relief requested from the RTA regulations contained in Section 1B01.1.B.1 of the Zoning Regulations. In certain circumstances, variances from Section 307.1 are not necessary for intrusions into a property's otherwise required residential transition areas. One alternate way for the Zoning Commissioner to determine the amount of RTA for a property is contained in B.C.Z.R. Section 1B01.1.B.1.c(1). This section reads as follows:

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

The subject property is more than 2.0 acres in size and, therefore, qualifies for approval pursuant to the above section. Additionally, in this case, the Director of the Office of Planning confirmed in writing that Planning “does not oppose any of the proposed intrusions into the property's RTA buffers as shown on the site plan” and that this Zoning Commissioner should determine that the proposed RTA buffers are “acceptable and should be approved, without the need for the variances requested in Case No. 2009-328-SPHA.” Having considered Petitioner's redlined site plan and the locations for the building addition, new off-street parking spaces, and other related improvements shown thereon as well as Petitioner's preliminary building elevations and preliminary landscape plan, I will, based upon the Office of Planning's recommendation, approve the RTAs as shown on Petitioner's Exhibit 1. This approval is made *pursuant to Section 1B01.1.B.1.c(1)*, therefore, the provisions of Section 307.1 are not applicable, and, as a result, the

portion of the Petition for Variance that requests RTA relief through Section 307.1 will be dismissed as moot.

Next, Petitioner addressed the variance requested for the width of the site's existing access driveway. According to Petitioner's Exhibit 1, this driveway at its narrowest point is 15 feet wide, and B.C.Z.R. Section 409.4.A requires 20 feet for a driveway with two-way movements, such as this one. The site plan approved in 1968 in Case No. 67-66-SPH shows the property's access point to Stevenson Lane and its driveway in the same configuration and width as shown on Petitioner's redlined site plan in the instant case. Petitioner confirmed for this Commissioner that no improvements to the driveway are planned in connection with this project and that there are certain impediments to widening it. Existing stone piers at the property's entrance on Stevenson Lane and a stone wall along the driveway would have to be razed and some significant trees visible from Stevenson Lane would be lost as well. Provisions such as the driveway width requirement contained in Section 409.4.A apply to *the development of land* as opposed to existing improvements shown on a site plan approved as part of prior zoning case that have existed in the same location without change. Comparing Petitioner's redlined site plan (Petitioner's Exhibit 1) to the site plan approved in Case No. 67-66-SPH will evidence the very same access driveway in both cases.² A variance is not required. This Commissioner will, therefore, also dismiss this variance as moot.

Even though this Commissioner determined at the public hearing that the Petition for Variance will be dismissed as moot, Petitioner, in an abundance of caution, presented testimony regarding not only its Petition for Special Hearing but also to satisfy its burden of proof for all of the variances filed in this case. Mr. Kennedy, Petitioner's project engineer, addressed the

² Case No. 67-66-SPH at the very least creates a presumption of correctness as to the driveway issues in this case.

property's existing conditions, the proposed site improvements as shown and indicated on Petitioner's Exhibit 1, and his familiarity with the surrounding area. With that information, Mr. Kennedy was able to formulate an opinion that the variances requested from the RTA requirements of the Zoning Regulations and for the existing driveway width meet all of the requirements of Section 307.1 of the Zoning Regulations.

Additionally, with regard to the Petition for Special Hearing, Mr. Kennedy was able to formulate an opinion that the proposed amendment to the Order and site plan approved in Case No. 67-66-SPH satisfies all of the requirements of Section 502.1.A through I of the Zoning Regulations. Included in Mr. Kennedy's testimony was his opinion that the proposed building addition and all other related site improvements will not be detrimental to the health, safety, or general welfare of the surrounding area and will not be inconsistent with the purposes of the property's D.R.5.5 zoning nor in any way inconsistent with the spirit and intent of the Zoning Regulations.

Mr. Sovich, Petitioner's architect, prepared preliminary color elevations for all of the facades of the proposed addition (Petitioner's Exhibits 8A and 8B) in the context of the existing building. The addition's building materials were selected by Mr. Sovich after visiting the property and taking into account the architectural style of the surrounding single-family residences and the building materials on the sides of those residences that face the subject property. Rather than design the building addition completely of stone and force an institutional presence on the surrounding properties, Mr. Sovich selected a mixture of materials that, in this expert opinion, are more compatible with the surrounding residential character of the neighborhood. Petitioner explained that, while these elevations are preliminary and the exact locations for windows and placement of building materials may change, the building addition will be constructed with a mix of the same building materials provided on Petitioner's Exhibit 8.

In Mr. Sovich's expert opinion, the proposed building addition, in the location shown on Petitioner's Exhibit 1, will not have any negative impact on the surrounding residential area. Mr. Gilliss confirmed that none of his clients objected to the preliminary building elevations.

Mr. Leonard, Petitioner's landscape architect, prepared a preliminary landscape plan for the property (Petitioner's Exhibit 7), which shows landscape plantings to supplement existing vegetation along the site's property lines. Site photographs were accepted into evidence as Petitioner's Exhibits 3A – 3I and 4A – 4H to show the property's existing vegetation, which Mr. Leonard considered in preparing his plan. Certain trees on the property will need to be removed for construction of the building addition and new parking spaces; however, Petitioner's landscape plan provides for supplemental landscaping on the west, south, and east sides of the proposed building addition between it and those property lines. The suggested plant locations and types of plantings (i.e., evergreen, deciduous, shrubs, understory trees) were determined based upon Mr. Leonard's prior site visits and the location of surrounding single-family residences. In Mr. Leonard's expert opinion, additional landscaping in the areas shown on Petitioner's Exhibit 7 will ensure an even more effective screen for the existing building and the proposed addition than exists today, and the addition will, therefore, not have any negative impact on the surrounding residential lots in the vicinity of the subject property. This Commission takes note of the fact that, while Petitioner's Exhibit 7 is a preliminary landscape plan, the County will require approval of a final landscape plan for this project prior to building permit.

I have considered all of the testimony and evidence presented by Petitioner. Again, the undersigned has determined that the Petition for Variance, in its entirety, is rendered moot for the reasons set out above. However, in the alternative, I will state that I would have granted all of the variances from the RTA regulations as well as for the existing driveway width, based on the

testimony and evidence submitted. I find that special circumstances or conditions exist that are peculiar to the land which is the subject of these variances. Further, I find that strict compliance with the Zoning Regulations would result in a practical difficulty or undue hardship. Without the requested RTA variances, Petitioner would be unable to upgrade its existing facilities as necessary to continue serving and caring for Baltimore County's aging population. Additionally, Petitioner's testimony showed that the driveway's current width is sufficient today and will serve the property with the proposed addition without any problems in the future. Razing the existing entry features on (and trees visible from) Stevenson Lane would be required for a widening of this driveway that is unnecessary. The community and neighbors oppose changes to these existing enhancements. Finally, I find that the Petition for Variance can be granted in strict harmony with the Zoning Regulations and without injury to the public health, safety, or general welfare of the surrounding area. Again, considering the location for the building addition and other related improvements, the proposed building architecture and mixture of building materials selected by Petitioner, and the landscape plan, there will be no adverse impact on the surrounding area.

With regard to the Petition for Special Hearing, I am also persuaded that Petitioner's request to amend the Order and site plan approved in Case No. 66-67-SPH should be granted. I have reviewed the criteria stated in B.C.Z.R. Section 502.1.A through I of the Zoning Regulations and find that Petitioner has satisfied each of the criteria outlined in that section. I am convinced that all of the proposed improvements to the subject property, including the building addition, new parking spaces, and intended increase in the permitted number of resident beds, will not cause any detrimental impacts to the health, safety, or general welfare of the locale, and can be accomplished without any of the negative impacts listed in B.C.Z.R. Section 502.1. Therefore, I am persuaded to grant the Petition for Special Hearing as well.

This Commissioner compliments Petitioner for working with the Stoneleigh Community Association as well as neighbors adjacent to the subject property in advance of the public hearing in this case. The result of Petitioner's efforts and the time invested by the community is a written agreement (Petitioner's Exhibit 9), which enabled everyone involved to agree on a satisfactory layout for the project, including the location for the building addition. An important part of this agreement from the community's perspective is a below grade storm water management facility for the building addition. For this reason, I encourage DEPRM to approve a below grade facility consistent with the agreement entered into by Petitioner, the community association, and certain association members immediately to the south of the property.

Pursuant to the advertisement, posting of the property and public hearing on these petitions held, and for the reasons set forth above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 29th day of September 2009, that the Petition for Special Hearing seeking approval to amend the Order and site plan approved in Case No. 67-66-SPH, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED;

IT IS FURTHER ORDERED, for the reasons stated above, that the residential transition areas, as shown and provided on Petitioner's Exhibit 1, and the intrusions, existing and proposed, into the residential transition areas shown thereon, pursuant to B.C.Z.R. Section 1B01.1.B.1.c(1), be and are hereby APPROVED; and

IT IS FURTHER ORDERED, for the reasons stated above, that this decision is subject to the following restrictions:

1. The Petitioner may apply for its permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

2. The provisions, conditions, terms and limitations of the Agreement with the Stoneleigh Community Association, Inc., et al, dated September 14, 2009, encumbering the subject property and the uses to be conducted thereon, are hereby incorporated into and made a material part of the approval given hereby, a copy of which shall be attached to the original Order kept in the Zoning Commissioner's Office.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 1B01.1.B.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a residential transition area setback a minimum of 69 feet from the rear (south) property line for a building addition in lieu of the required 75 feet; to permit a residential transition area buffer and residential transition area setbacks a minimum of 42 feet from the rear (south) property line and 25 feet from a side (east) property line for new off-street parking in lieu of the required 50 foot residential transition area buffer and 75 foot residential transition area setback; to allow existing site improvements, including accessory structures and off-street parking within the 50 foot residential transition area buffer and 75 foot residential transition area setback, and finally from Section 409.4.A of the B.C.Z.R. to allow an existing driveway width of 15 feet for two-way movements in lieu of the required 20 feet, be and is hereby **DISMISSED AS MOOT**.

Any appeal of this decision shall be taken in accordance with Baltimore County Code Section 32-3-401.

WJW:dlw

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County