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| IN RE: PETITIONS FOR SPECIAL HEARING | * | BEFORE THE |
| AND VARIANCE | | |
| SW Corner of Allender Road and | * | ZONING COMMISSIONER |
| Red Lion Road | | |
| (5811 Allender Road) | * | OF |
| | | |
| 5 th Council District | * | BALTIMORE COUNTY |
| 11 th Election District | | |
| | * | |
| Funstate, LLC | | |
| Petitioner | * | Case No. 2010-0219-SPHA |
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| * * * * * | | |

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 the owner of the subject property, Funstate, LLC, by Dino Fasce, its Managing Member. The Petitioner requests variance relief from Sections 255.1 and 238.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side yard setback of 12 feet in lieu of the minimum required setback of 30 feet, a rear setback of 12 feet in lieu of the minimum required 30 feet; and setbacks between the proposed and existing buildings on the site of 41 feet in lieu of the minimum required 60 feet setback. In the event that the variance relief requested is granted, special hearing relief, pursuant to Section 500.7 of the B.C.Z.R., is requested to approve an amendment to the site plan previously approved in Case No. 98-401-SPHA. The subject property and requested relief are more particularly described on the amended red-lined site plan submitted, which was accepted into evidence and marked as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the requests were Dino Fasce, on behalf of Funstate, LLC, and Richard E. Matz, P.E., Vice President of Colbert, Matz, Rosenfelt, Inc., the consultant who prepared the site plan. Counsel for the Petitioner at the hearing was

John B. Gontrum, Esquire of Whiteford, Taylor & Preston, LLC. Adjoining and nearby property owners appeared as concerned citizens. These included Robert Lang, who operates Bobby's Pottys at 11435 Red Lion Road, Ronald Debaufre, his neighbor, and Charles Ferguson, the owner of property to the south of Mr. Debaufre's site on Red Lion Road. Both Mr. Lang's property and Mr. Debaufre's property are shown on Petitioner's Exhibit 1.

Testimony and evidence disclosed that the property has been the subject of four (4) previous zoning hearings. Initially, Zoning Case 65-278 granted a petition to change the zoning classification from a residential zone R-6 to M.L. The property is still zoned M.L., and in zoning case No. 96-326-X, a special exception was granted for an indoor commercial recreational facility. At that time 141 parking spaces were provided. A subsequent special exception for an arcade was granted in zoning case No. 97-205-X. Finally, in zoning Case No. 98-401-SPHA zoning variance relief was granted and the site plan was amended to permit the construction of a swimming pool, rollerblade skating area and for additional parking. At that time, zoning variance relief from the setbacks between warehouse building now on the site and the main recreation building were granted as was a side yard setback variance for the warehouse building.

Petitioner now proposes to raze the existing warehouse building and to replace it with a significantly larger recreational building on the east side of the site. At the hearing, Petitioner withdrew its request for a rear yard variance, and instead presented the red-lined site plan shifting the proposed building forward 18' so that the minimum rear yard setback was achieved. Although some of the existing parking area would be lost due to the new construction, additional parking also is being added to the side of the building as shown on Petitioner's Exhibit 1. Consequently, Petitioner's Exhibit 1 shows a net loss of only six (6) parking spaces, and the

number of parking spaces being provided (264) far exceeds the spaces required by the zoning regulations (193).

Petitioner seeks the setback variances because adding on to the existing building simply is not feasible. The main entrance to the building and accessible parking would be eliminated. More parking would be eliminated than under the proposed site plan, and as the adjacent property owners and residents pointed out in their testimony, parking at this site is very important. In addition, a variance was previously granted for the building to building setback for the existing warehouse to the existing recreation building, and the proposal simply extends that variance along the length of the proposed building.

The owner of the property impacted by the proposed side yard variance (Piney Branch Motors, Inc.) did not appear in opposition. That side of the property is on the opposite side of the site from Red Lion Road, and none of the citizens were concerned over the setback.

The red-lined plan (Petitioner's Exhibit 1) also reflects a boundary survey prepared by Colbert, Matz, Rosenfelt, Inc. The boundary survey, which apparently is the first to be conducted on the property in decades, disclosed that a County drainage easement which is supposed to run along the eastern property line is not properly located. The new building will require it to be relocated and improved to its original deeded location. Comments received by the Department of Public Works have been satisfied, and Petitioner's Exhibit 5 is a copy of the site plan signed by Dennis Kennedy acknowledging his satisfaction with the resolution to his comments proposed by Petitioner.

The boundary survey also clarified some issues raised by Mr. Lang, managing member of 11435 Red Lion Road, LLC and its user Bobby's Pottys. It appears that the fence, which separates the property and which was shown on previous site plans is actually part of the

adjacent property. Indeed, a pump house and metal water storage tank also appear to encroach on the adjoining property. Petitioner proposes a new water line to serve the proposed building and existing building. The new water line would provide sprinkler service from the County water line in Allender Road, which would allow the existing pump house and water tank to be removed.

Of primary concern to the citizens who appeared were storm water runoff and parking. As to this issue, Mr. Debaufre testified and presented several photographs introduced into evidence as Protestants' Exhibit 1. The photographs depict a pipe coming from the southwest corner of the subject property and erosion along Red Lion Road. There currently is no management of storm water coming from this site or apparently from properties adjoining the subject property, some of which connect into the County's storm drain easement and some of which do not. All of the properties, however, appear to drain their storm water west onto the Debaufre and Bobby's Pottys properties without any management.

No additional storm water will be generated by the proposed building because the proposed building will not be increasing the impervious area on the site. Indeed, there might be some decrease of impervious area due to taking up pavement in the rear of the site and adding landscape islands to the parking area. Mr. Matz, however, testified that the proposal will require that the Petitioner address storm water management on the subject site. The regulations impacting this development will require that management of approximately 1.5 acres of disturbed area be addressed. Consequently, there is an opportunity if the proposed building goes forward to improve an existing condition for the property owners along Red Lion Road.¹

¹ The parties have agreed to meet on the site to look at the current outfalls from the property and to determine if a proposal can be made to the Department of Environmental Protection and Resource Management to benefit all of the interests.

There was testimony that parking on the site now is occasionally insufficient to handle the weekend demands for parking. Although the frequency of the need for additional parking was an issue that was not resolved, the Petitioner has agreed to make additional overflow parking available to the rear of the existing recreation building. This area already is impervious, and the addition of compacted stone to enhance the base may provide, according to Mr. Matz, at least an additional fifty (50) parking spaces not now available. This should address the parking generated by the proposed building. Mr. Matz has indicated an area on Petitioner's Exhibit 1 where such parking shall be provided. Petitioner also is providing additional parking between the buildings not now available and the addition of internal parking located away from the entrance into the site and closer to the main entrance may encourage more people to park on site and not along Allender and Red Lion Roads.

All of the participants at the hearing agreed that there was a need for this recreational use, and that it really does serve the community. There were no complaints over the operation of the existing or proposed use or over the actual zoning relief sought.

There were no adverse Zoning Advisory Committee (ZAC) comments to the requested relief. Petitioner had met with Dennis Kennedy, Supervisor of the Bureau of Development Plans Review, prior to the hearing and discussed the issues he raised. Mr. Kennedy signed off on a copy of the site plan incorporating the changes he sought (Petitioner's Exhibit 4).

I am persuaded that the variance relief sought is based on the unique site conditions and positioning of buildings that have been on the property for many decades and not on any conditions created by Petitioner. I am further convinced that to deny the side yard variance and the building to building setback variance would indeed create a practical difficulty resulting in

the loss of parking, which is important to this particular use. Certainly, there is no adverse impact to any adjacent property by virtue of the variance relief sought.

I am also persuaded that based on the testimony and evidence presented that the amendment sought to the previously granted special exception and site plan is justified. By allowing the Petitioner to go forward with the new construction the storm water issues will have to be addressed at least in part, which can only have a positive impact on the neighbors downhill from the site. Because no additional impervious area will be created, any storm water management will have a positive impact over the existing conditions. I also believe that Petitioner's provision of additional parking over that required by the zoning regulations will help ameliorate any negative impacts from additional use of the site. As noted above, the relief requested will not cause any injury to the public health, safety or general welfare and meets the spirit and intent of the B.C.Z.R.

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 shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 15th day of April, 2010 that the Petition for Special Hearing, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve an amendment to the site plan previously approved in Case No. 98-401-SPHA, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance from Sections 255.1 and 238.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side yard setback of 12 feet in lieu of the minimum required setback of 30 feet, and setbacks between the proposed and

existing buildings on the site of 41 feet in lieu of the minimum required 60 feet setback, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's Variance request to have a rear yard setback of 12 feet in lieu of the minimum required 30 feet, be and is hereby DISMISSED.

Petitioner's use of the property is subject to the following restriction:

1. The Petitioner may apply for its building permits and be granted same upon the receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until the thirty (30) day appeal period from the date of this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.

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

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