

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
NE corner of York Road and Stablersville		
Road, N and S of Stablersville Road, E of	*	DEPUTY ZONING
York Road		
7 th Election District	*	COMMISSIONER
3 rd Councilmanic District		
(Stablersville Road)	*	FOR BALTIMORE COUNTY
Loyola University Maryland, Inc.	*	
<i>Legal Owner</i>		
	*	CASE NO. 2010-0273-SPH

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Hearing filed by Terry Sawyer, Vice President for Administration, on behalf of the legal property owner, Loyola University Maryland, Inc. Petitioner requests Special Hearing relief in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to extend the period for utilization of the special exception granted in Case No. 04-0337-SPHX to five years from the date of the final order. The subject property and requested relief are more fully described on the two-page site plan drawings which were marked and accepted into evidence as Petitioner’s Exhibits 1A and 1B.

Appearing at the requisite public hearing in support of the requested special hearing relief were Terry Sawyer, Vice President for Administration with Petitioner Loyola University Maryland, Inc., and Mitchell Kellman, zoning specialist and land use consultant with Daft McCune Walker, Inc., the firm that prepared the site plan drawings. Appearing as attorneys for Petitioner were Arnold Jablon, Esquire and Christopher Mudd, Esquire with Venable LLP. As with the original Development Plan and Special Exception case from several years ago, this matter attracted significant interest in the community and a number of interested citizens from

the Parkton community surrounding the subject property attended the hearing. Their names and addresses are listed on the "Citizen's Sign-In Sheet" that was circulated prior to the hearing and contained in the case file. Appearing as the attorney for the Protestants in opposition to the instant special hearing request was G. Macy Nelson, Esquire.¹

Testimony and evidence offered revealed that the subject property is irregular in shape and contains a gross area of 107.68 acres, more or less, zoned R.C.2. The subject property is located on both the north and south sides of Stablersville Road, just east of York Road and the Baltimore Harrisburg Expressway (Interstate 83), in the rural Parkton area of northern Baltimore County. Ingress/egress is by way of Middletown Road, York Road (MD Rte. 45) and ultimately Stablersville Road, which bisects the property. The property is currently unimproved. There are numerous environmental constraints on the property including areas of forest, wetlands, streams, etc., with much of the property in its natural state.

As aforementioned, the property was the subject of a previous Development Plan and Zoning Hearing that began in 2004. At that time, Petitioners requested approval of a development plan for a spiritual retreat center on the subject property, as well as a special exception to permit a building for religious worship/school/camp in an R.C.2 Zone, and a special hearing to confirm that the proposed parking shown on the plan is adequate and to approve the transfer of approximately 54 acres of R.C.2 zoned land as a non-density transfer. In Case Nos. VII-389 and 04-337-SPHX, then-Zoning Commissioner Lawrence E. Schmidt approved the Development Plan and the related zoning relief in an Order dated June, 2004. Following a lengthy appeals process as to the granting of the special exception that extended almost four years, including appeals to the Baltimore County Board of Appeals, the Circuit Court for

¹ The names of the Protestants represented by Mr. Nelson is listed in the entry of appearance letter dated June 7, 2010 and is also contained in the case file.

Baltimore County, the Court of Special Appeals of Maryland, and the Court of Appeals of Maryland, a final order affirming the granting of the special exception was entered in the case on September 9, 2008. That opinion was reported as *People's Counsel v. Loyola College*, 406 Md. 54 (2008). Not only did the opinion determine the issues related specifically to the instant matter, but that decision also proved to be a landmark zoning case that further explained and interpreted the special exception/conditional use law that had been largely untouched since *Schultz v. Pritts*, 291 Md. 1 (1981).

At this juncture, Petitioner Loyola University Maryland requests to extend the period for utilization of the special exception granted in Case No. 04-337-SPHX from the normal two years to five years from the date of the final order pursuant to Section 502.3 of the B.C.Z.R. Taking into account the final order in the case, the current two-year period for utilization of the special exception is September 9, 2008 thru September 9, 2010. Petitioner requests the period for utilization to be extended to September 9, 2013. Section 502.3 of the B.C.Z.R. provides in pertinent part as follows:

A special exception which has not been utilized within a period of two years from the date of the final order granting same, or such longer period not exceeding five years, as may have been specified therein, shall thereafter be void... After a final order granting a special exception, the Zoning Commissioner, at any time prior to expiration of the period of time authorized for its utilization, may grant one or more extensions of such period, provided that a maximum time for utilization of the special exception is not thereby extended for a period of more than five years from the date of the final order granting same.

At the outset of the hearing, Petitioner's attorney, Mr. Jablon, questioned the necessity of a special hearing on the issue of extending the two year period for utilization to five years. He argued that nowhere in the Regulation is a hearing specified as required, and he views the request for extension as more of a ministerial action on the part of this Commission -- one that should not require a special hearing. For his part, Mr. Nelson disagreed with Mr. Jablon's

interpretation and argued that a hearing is necessary, especially in light of the fact that circumstances under which the original special exception was granted may have changed over time. On this point, I believe that a public hearing is necessary for a request to extend the period for utilization of a special exception. Whether the request is made in the context of a special exception hearing or, as here in a separate request, in my view, a public hearing with notice to potential interested parties is required; however, the point must also be made that the required public hearing does not involve re-litigation of the underlying special exception case, and a re-evaluation of the Section 502.1 criteria and other factors upon which that decision was based. The sole issue to be decided in the special hearing request at hand is the appropriateness of extending the period for utilization of the previously granted special exception from two years to five years.

On this issue, testimony was offered by Mitchell Kellman, zoning and land use specialist and consultant with Daft McCune Walker, Inc. Mr. Kellman indicated that the site plan submitted and accepted into evidence as Petitioner's Exhibits 1A and 1B are the same as the plan approved in Case No. 04-337-SPHX. No substantive changes have been made to this approved plan, other than updates revealing the litigation history of the property, and no construction has occurred on the site of the subject property.

Next to testify was Terrence Sawyer, Vice President of Administration for Loyola University Maryland, Inc. Mr. Sawyer's position at the University involves overseeing administration and spearheading government relations efforts with local, state, and federal governments. Mr. Sawyer explained that the goal for this project when approved by the Zoning Commissioner in June 2004 was to establish a retreat center within reasonable proximity of the

University's main campus located on North Charles Street in Baltimore.² The goal for the project remains the same now as then; however, mitigating circumstances have occurred which have frustrated efforts to move forward with the project.

Mr. Sawyer testified that at the time of the project's approval in 2004, the University was in a more stable financial position to build and construct the retreat center. But due to the prolonged appeals process in this case and the uncertainty of litigation, the University was not able to begin the project until a final order was issued. Once a final order was issued by the Court of Appeals on September 9, 2008, the economic downturn was in full swing and the University was in an extremely different financial position than it was in 2004. Mr. Sawyer testified that as a private institution, Loyola University relies heavily on financial contributions from donors, which as a result of the economy, have decreased significantly. The loss in donor contributions has negatively affected the University's endowment, thereby preventing some capital projects from progressing as planned. The economic downturn has also impacted the ability of students to pay the cost of tuition at the University, affecting enrollment numbers, as well as causing funds to be diverted from capital projects to financial aid. Finally, he indicated that the economic climate has also caused a decrease in state funding, which has also indirectly affected the project. These extenuating circumstances have created the delay in the construction of the spiritual retreat center on the subject property. While Petitioner is committed to developing the instant site, the University is proceeding cautiously and prudently, as any business would in the current economic uncertainty. As a result, Petitioner requests the aforementioned extension of five years.

On cross-examination, Mr. Nelson, attorney for the Protestants, questioned the testimony of Mr. Sawyer regarding the financial state of the University. Specifically, he referenced the

² Loyola University Maryland is a Jesuit, Catholic University founded in 1852.

recent construction of a lacrosse and soccer stadium complex (costing an estimated \$60 million) which opened this past year, a new residence hall (costing several million dollars) and minor renovations to the University's graduate facility in Timonium. Moreover, Mr. Nelson asked questions regarding Petitioner's purchase of a retreat center located in Allegheny County, specifically in Flintstone, Maryland. Mr. Sawyer responded that due to the uncertainty of the litigation, the retreat center in Flintstone was purchased in 2005 for approximately \$1 million as a turn-key operation meant to be used only as a stop-gap until the instant matter was resolved and the Parkton retreat center could be constructed. No buildings were constructed at the Flintstone site, since it had been used as a retreat previously. Mr. Sawyer also asserted that this location is not only too far from the main campus of the University but is ultimately too small to accommodate the goals and needs of Petitioner.

The thrust of the Protestant's objections to the Petitioner's request to extend the time period for utilization of the special exception is that changes in circumstances in the land preservation efforts in the surrounding area make such an extension inappropriate. Testifying on these grounds was Lynn Jones, owner of property at 815 Stablers Church Road, which is located in close proximity to the subject property in Parkton. Ms. Jones testified that her family has owned her tract of land since the 1740's and that the land was part of the original land grant given to Lord Calvert by King George III. The land has remained in a relative natural state and been used only for agricultural and residential purposes since that time. Ms. Jones further testified that during the time since approval of Petitioner's special exception request, the majority of the land surrounding the subject property has been placed or is in the process of being placed into various local and state environmental trust easements. These preservation efforts can be

viewed on the map and overlay that was marked and accepted into evidence as Protestant's Exhibit 1.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. There were no negative comments. The Department of Environmental Protection and Resource Management submitted the following comments: Any proposed building permits will be reviewed by Groundwater Management since the site is on well and septic. Compliance with the approved plans is required per the Baltimore County Code, Article 33, Titles 3 and 6, regarding Forest Buffer and Forest Conservation regulations. Lastly, corrections should be made to the site plan to reflect adjacent properties of Norton and Jones as agricultural and the Jones property as being under a County Agricultural Preservation easement. In addition, the Sparks-Glencoe Community Planning Council submitted a letter dated June 4, 2010 in opposition to Petitioner's request, though the crux of their opposition was based mainly on the substantive merits of the special exception case that was previously considered and determined.

Considering all the testimony and the evidence presented, I am persuaded to grant the special hearing request to extend the period for utilization of the special exception granted in Case No. 04-0337-SPHX to five years from the date of the final order -- until September 9, 2013. While I commend the efforts of the Parkton community to preserve the agricultural character of their land and Ms. Jones' concerns regarding the effects development of the subject property may have on that character, I do not find the placing of land into environmental trust easements, even if relevant, as a "change in circumstances" that would merit denying the extension of time requested by Petitioner, and certainly not from exercising the special exception use granted

Petitioner in Case No. 04-337-SPHX and *People's Counsel v. Loyola College*, 406 Md. 54 (2008).

Moreover, considering the prolonged appeals process and the toll the economy has taken on the financial condition of Loyola University Maryland, I find that Petitioner's request meets the "reasonableness" standard required by Section 502.3 of the B.C.Z.R. Obviously, as Mr. Sawyer's testimony indicates, Petitioner has made certain choices with its limited financial resources. It has chosen to fund certain projects it deemed necessary at the time, while putting off certain others. With the economic uncertainty and legal challenges associated with the instant matter, it chose not to expend additional monies beyond those necessary to pursue or defend the litigation until it was resolved one way or the other. This is not an unreasonable position to take. But while the litigation may be largely resolved, in the interim, the economic downturn has made it imprudent to construct the spiritual retreat center at the present time; hence, Petitioner has requested additional time within which to utilize the granted special exception. In my view, the special hearing request is reasonable and within the spirit and intent of the Zoning Regulations.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and after considering the testimony and evidence offered, I find that Petitioner's request for special hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 10th day of June, 2010 that Petitioner's request for Special Hearing relief filed in accordance with Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to extend the period for utilization of the special exception granted in Case No. 04-0337-SPHX to five years from the date of the final order be and is hereby GRANTED, subject to the following:

1. 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 such time as the 30-day appellate process from 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.
2. Compliance with the approved plans in regards to Baltimore County Code, Article 33, Title 3 (Forest Buffer regulations) and Article 33, Title 6 (Forest Conservation regulations) as applied to this development through the Environmental Impact Review (EIR) Section is required.
3. Building permits must be reviewed by Groundwater Management since the site is on well and septic.
4. The adjacent properties of Norton and Jones on the site plan should be marked as agricultural and the Jones property should be shown as being under a County Agricultural Preservation easement.
5. Due to the fact that the maximum time for utilization of a special exception cannot be extended for more than a period of five years from the date of final order granting same, and Petitioner in this case has been granted the maximum extension of five years, there shall be no further extensions of any such period in this matter.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz