

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
W side Reisterstown Road; 225 feet S of the	*	DEPUTY ZONING
c/l of Old Court Road		
3 rd Election District	*	COMMISSIONER
2 nd Councilmanic District		
(1504-1508 Reisterstown Road)	*	FOR BALTIMORE COUNTY
Chong O. and Hye S. Ryee	*	
<i>Legal Owners</i>		
Pramukh Swami Donuts, LLC	*	
<i>Contract Lessee</i>		
		Case No. 2011-0015-SPHA
	*	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the legal property owners, Chong O. and Hye S. Ryee, and the contract lessee, Neil Patel, Authorized Member, on behalf of Pramukh Swami Donuts, LLC (hereinafter “Petitioner”). Special Hearing relief is requested in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve the amendment of the approved site plans and Orders including restrictions in those Orders in Case Nos. 70-73-A and 91-424-SPHA, such that the approved site plan will be the site plan that is the subject of this Petition. If determined to be necessary given prior approvals, the Variance request is from Section 409.6 of the B.C.Z.R. to permit the existing 18 parking spaces in lieu of the required 43 spaces in accordance with the site plan that is the subject of this Petition. The subject property and requested relief are more fully described on site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the requested relief were Neil Patel and Gaurang Patel on behalf of Petitioner Pramukh Swami Donuts, LLC, the contract

lessee, and Stuart D. Kaplow, Esquire, attorney for Petitioner. Also appearing in support of the requested relief was Paul Weiner, the professional engineer who prepared the site plan. Appearing as an interested citizen was Alan Zukerberg of 7919 Long Meadow Road in Pikesville. There were no other interested persons in attendance.

The testimony and evidence was presented by way of a proffer from Mr. Kaplow and revealed that the subject property is irregular shaped and consists of approximately 15,363 square feet or 0.35 acre, more or less, zoned B.L.-C.T. The property is located on the southwest side of Reisterstown Road, south of Old Court Road and just north of Clovelly Road, in the Pikesville area of Baltimore County. As shown on the site plan, the property is improved with a one-story commercial building consisting of 4,800 square feet and 18 off-street parking spaces. Access to the property is via a 30 foot wide entrance at Reisterstown Road. There is also a 35 foot wide entrance that is shared with the adjacent property to the north. The commercial building contains several different businesses, including the China King carry out, the Pizza Man restaurant, a dry cleaner, and the Dunkin Donuts carry out that is the subject of the instant requests for zoning relief.

Further evidence revealed that Petitioner has been in business since 2004 and has been a Dunkin Donuts franchisee since 2007 -- and at the present location since 2008. In addition, Mr. Kaplow pointed out that this particular franchise is one of only two kosher Dunkin Donuts' in the State of Maryland. The subject Dunkin Donuts location is popular in the community, but is relatively small, measuring only 20 feet wide by 40 feet deep, for a total of about 800 square feet. Interior space is at a premium, with no seating and very little room inside for patrons. At this juncture, Petitioner is planning to make some improvements to the interior and also is desirous of additional space. As such, Petitioner proposes to add a dry box storage addition to

the end of the building, as depicted on the site plan. The addition would measure 16 feet wide by 9 feet deep and would be used primarily as an overflow stock room.¹

There are currently four parking spaces at that end of the building. As a result of the proposed addition, one of the existing parking spaces must be eliminated; however, the four parking spaces will be maintained by adding the eliminated space to the other end of the row of spaces, as shown and labeled on the site plan. All other aspects of the property layout, and in particular the existing parking configuration, remain the same as before. Mr. Weiner, Petitioner's engineer, also noted that the proposed addition would be relatively small, and due to the diagonal layout of the building and the end of the building where the Dunkin Donuts is located being furthest from Reisterstown Road, the visibility of the addition should be relatively minor. Because of the requested amendment to the prior site plans and Orders for the subject property, Mr. Weiner also offered his expert opinion that the proposed addition would not be detrimental to the health, safety or general welfare of the locality, nor would it have any negative or detrimental impacts on the other applicable criteria set forth in Section 502.1 of the B.C.Z.R. Mr. Kaplow also mentioned that, other than updating and amending the previously approved site plans and Orders from prior cases and the movement of one parking space, the proposed addition does not require any additional zoning relief.

The Zoning Advisory Committee (ZAC) comments were received and are made a part of the record in this case. Comments were received from the Office of Planning dated August 16, 2010 which indicates that the property is within the Pikesville Revitalization District. The new construction of a storage cooler box is subject to the Pikesville Commercial Revitalization

¹ Presently, Petitioner is utilizing a temporary storage container in the location where the addition is proposed; obviously, Petitioner is looking for a more permanent solution to its storage issues and believes the planned addition would solve the problem.

Guidelines and should be reviewed by the Planning staff as part of the administrative review process. The property is improved with a commercial strip shopping center and what appears to be a metal storage container which Petitioner's engineer states is temporary and will be removed. The site plan and application do not provide detail concerning amendments to prior restrictions. The recommendations of staff in the Design Review Panel areas are binding upon the Zoning Commissioner and the Department of Permits and Development Management. Architectural elevation drawings, submitted for staff review are acceptable. The Planning Office supports approval of the special hearing provided the property owners submit a letter to the County indicating they will give the right of entry for future construction of 3 foot sidewalk widening and streetscape. This will allow for a smooth transition between the proposed sidewalk improvements to the northwest of the site (along the future Walgreen's frontage) and southwest of the site (Club Centre frontage).

In response to the Office of Planning's comments, Mr. Kaplow submitted the architectural elevation drawings that had been submitted to that office and they were marked and accepted into evidence as Petitioner's Exhibit 2. The drawings provide details as to the front and side elevations and the appearance of the building with the new addition and finishes, as well as the interior demolition plan and the proposed new layout of the interior. In addition, as requested, Mr. Kaplow submitted a letter authored by the property owners dated August 13, 2010 giving the County a right of entry for a period of five years in order to make the referenced sidewalk improvements. This letter was marked and accepted into evidence as Petitioner's Exhibit 3. Finally, Mr. Kaplow submitted a Petition in Support that was marked and accepted into evidence as Petitioner's Exhibit 4. This Petition was signed by 103 individuals, presumably patrons of the Dunkin Donuts, and asks that the requested relief be granted.

After due consideration of the testimony and evidence presented, I am persuaded to grant the requested relief. As to the request for special hearing, this is merely to update and amend the previously approved site plans and Orders from the prior zoning cases. The granting of this relief will not change the fundamental nature of the previously granted relief, but merely serves to incorporate the proposed new addition and the slightly reconfigured parking layout.

As to the Petition for Variance, I am also persuaded to grant this relief. Although in my view, this matter seems to be less of a variance case and more of a special hearing to approve a modified parking plan, I shall nonetheless grant the relief as requested. In my judgment, there are certainly special circumstances or conditions existing that are peculiar to the land or structure which is the subject of the variance request. The property itself is an irregular triangle shape. It also has two access points on Reisterstown Road and backs up to Clovelly Road, which is no longer a thru-street but still constitutes a drive aisle behind the property. These constraints limit the extent to which improvements can be made on the property. Hence, in my view, strict interpretation of the B.C.Z.R. would impose a practical difficulty and unreasonable hardship upon Petitioner.

Finally, I find that the variance request can be granted in strict harmony with the spirit and intent of said regulations, and in such a manner as to grant relief without injury to the public health, safety and general welfare.

Pursuant to the advertisement, posting of the property and public hearing held, and after considering the testimony and evidence offered by the parties, I find that Petitioner's special hearing and variance requests should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 22nd day of September, 2010 that Petitioner's Special Hearing request in accordance

with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve the amendment of the approved site plans and Orders including restrictions in those Orders in Case Nos. 70-73-A and 91-424-SPHA, such that the approved site plan will be the site plan that is the subject of this Petition, be and is hereby **GRANTED**; and

IT IS FURTHER ORDERED that Petitioner’s Variance request from Section 409.6 of the B.C.Z.R. to permit the existing 18 parking spaces in lieu of the required 43 spaces in accordance with the site plan that is the subject of this Petition be and is hereby **GRANTED**.

The relief granted herein is subject to the following conditions:

1. Petitioner is advised that it may apply for any required building 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 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. Architectural elevation drawings shall be submitted to the Office of Planning for review and approval prior to the issuance of any building permit.
3. As depicted in Petitioner’s Exhibit 3, the property owners shall submit a letter to Baltimore County giving the right of entry for future construction of 3 foot sidewalk widening and streetscape to allow a smooth transition between the proposed sidewalk improvements to the northwest of the site (along the future Walgreen’s frontage) and southwest of the site (Club Centre frontage).

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