

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
SE Side of Parkwood Road, 212' SW of	*	OFFICE OF
c/line of North Point Road		
12 th Election District	*	ADMINISTRATIVE HEARINGS
7 th Councilmanic District		
(2 Parkwood Road)	*	FOR BALTIMORE COUNTY
John W. Searfoss and Charles P. Patterson	*	
<i>Legal Owners</i>		
Nicolett Zizos, et al, <i>Contract Purchaser</i>	*	Case No. 2011-0316-SPHA
Petitioners		

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for consideration of Petitions for Special Hearing and Variance filed by John W. Searfoss and Charles P. Patterson, the legal owners of the subject property, and Nicolett Zizos, et al, contract purchaser. Petitioners request Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR.”) as follows:

- A modified parking space and loading space plan in accordance with BCZR Section 409.12.B; and/or in the alternative;
- Off-site parking spaces for uses other than residential and lodging, within 500 feet walking distance of a building entrance to use that such spaces serve in accordance with BCZR Section 409.7.B.1;
- A use permit for the use of land in a residential zone for parking facilities to meet the requirements of Section 409.6 of the BCZR, pursuant to Section 409.8 of the BCZR;
- To allow access through a residential zone for a commercial use in accordance to the Zoning Commissioner's Policy Manual (ZCPM) Section 102.6.A.3; and
- Such other and further relief as may be deemed necessary by the Administrative Law Judge for Baltimore County.

Additionally, Petitioners request Variance relief as follows:

- To allow a 10 foot buffer and setback for parking in a RTA in lieu of the required 50 foot buffer and the 75 foot setback in accordance with BCZR Section 1B01.1B.1.e.(5), and
- Such other and further relief as may be deemed necessary by the Administrative Law Judge for Baltimore County.

The subject property and requested relief are more fully described on the site plan, marked and accepted into evidence as Petitioners' Exhibit 1.

At the requisite public hearing in support of the requested relief was Nicolett Zizos, contract purchaser. Also appearing in support of the requested relief were John W. Searfoss and Kenneth James Wells with KJ Wells, Inc., the professional surveyor who prepared the site plan for the Petitioners. The file reveals that the Petition was properly advertised and the property was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons in attendance.

The Zoning Advisory Committee ("ZAC") comments were received by this Administrative Law Judge and are made a part of the record in this case. There were no adverse comments received from any of the County reviewing agencies.

Mr. Wells was accepted as an expert witness in the field of surveying and the regulations pertaining to development in Baltimore County, and proceeded to proffer Petitioners' presentation. He described the property in question as comprising approximately 0.143 acres of land situated in close proximity to the southeast side of Parkwood Road and the intersection of North Point Road in Dundalk. He stated that it was 150 feet deep, 50 feet wide, and split zoned DR 5.5 and BL-CCC, as indicated on Petitioners' Exhibit 1. The site, known as Lots 37 and 38 on the plat are both served by public sewer and water. The site in question is not located in a floodplain or subject to any other environmental constraints.

He testified that the commercial property to which their request relates is also owned by the contract Petitioner, Nicolett Zizos, and presently contains ongoing offices, a nail salon, billiards hall, and a diner. The existing carpet and flooring business on the site (Lots 6, 7, and part of 8) also to be served by Petitioners' proposal and request, is owned by Searfoss and Patterson. He noted that for almost 50 years, the driveway from Parkwood Road to the rear of the store has been utilized for deliveries. He pointed out that under the proposal, there would also be sufficient space (required under 409.8) for a "turnaround."

Mr. Wells presented the proposal of Petitioners, to wit: the approval of 13 parking spaces, driveway and delivery capabilities from Parkwood Road to the rear of the commercial uses previously described. These are shown by the shaded area on the Plan to Accompany the Petition for Special Hearing and Variance (Petitioners' Exhibit 1). At the same time, Petitioners request a use permit so the proposed parking/delivery area could utilize DR zoned land.

The witness explained that there is not enough parking, primarily for employees of the commercial uses carried out on the site in question. As a result, Parkwood Road and the residential neighborhood on the west side of Parkwood Road is utilized for overflow parking by the patrons. The proposal is intended to avoid that situation. The witness referred to the shaded area of the plan, noting that, as a result of the impervious area in the proposal, they were able to avoid stormwater management issues and pointed out that only 2,500 square feet in total would be disturbed by the Petitioners' proposal.

Mr. Wells offered that the Petitioners proposed a Class "A" 10 foot in width planted buffer to separate the parking/loading area from the adjacent residential neighbors (the subject of the accompanying variance request in this matter). He described the existing lighting as 16 foot light fixtures. These lights had already been functioning on the property for many years. Finally,

Petitioners will request a permit to raze the structure presently located on the proposed parking site, in order to allow sufficient access and use space.

The witness then directed himself to the specific statutory requirements for the relief being requested. As to the request for a modified parking space and loading space plan in accordance with Section 409.12.B of the B.C.Z.R., he stated that, as the physical realities of the site in question rendered the requirements for parking and loading space unduly difficult, the Petitioners are entitled to request a modified plan pursuant to the Section 409.8.B.1 of the B.C.Z.R. He asserted that the Petitioners would comply with the design standards of Section 409.8; that the commercial nature of the area was appropriate for the relief requested; and that there would be a positive impact on the surrounding community by providing space for parking that would otherwise be located on Parkwood Road and the adjacent residential community. He then briefly reiterated that, as noted on the Plan to Accompany (Petitioners' Exhibit 1), the driveway they propose on residential land is the only possible access from the public street (Parkwood Road) and the already existing commercial use to be served by the proposed parking/delivery area. Finally, Mr. Wells satisfactorily addressed the individual requirements of Section 502.1 of the B.C.Z.R., which is required for relief generally herein as well as specifically noted in B.C.Z.R. 409.8.B.1.e(4). He concluded thereupon that the requested relief would not result in any difficulties therein enumerated.

Mr. Wells then turned his attention to the variance relief requested by the Petitioners. He pointed to the size and configuration of the subject site vis-à-vis the existing commercial uses to be served; as well as the juxtaposition of commercial and residential land (as shown on the plan). In addition, he observed that the commercial use is located up to its property line. In sum, he believes that the above-noted conditions rendered the site unique. Given these physical realities,

he asserts that there simply is not enough space to utilize the relief requested in the special hearing, if granted, on that site.

Considering all of the testimony and evidence presented, I find that the Petitioners have satisfied the requirements of Section 409.1.2.b (a modified parking space and loading space plan) as well those requirements for a use permit for the use of land in a residential zone for parking facilities under Section 409.6 of the B.C.Z.R.; both requests pursuant to the requirements under Section 409.8.A and B of the B.C.Z.R. In addition, I am convinced that the Petitioners' proposal satisfies the conditions and requirements set forth in the Zoning Commissioner's Policy Manual, Section 102.6.3. Moreover, Petitioners have properly addressed and satisfied the inquiries of Section 502.1 of the B.C.Z.R. I further find that the granting of the special hearing relief as set forth herein can be accomplished without injury to the public health, safety, and general welfare. In view of these determinations, and the granting of Petitioners' request pursuant to them, their request for off site parking spaces within 500 feet walking distance of a building entrance under Section 409.7.B.1 is rendered moot.

As regard the variance request, I am convinced that the property in question is in fact unique under the requirements of statute and case law. It is also clear that Petitioners could not act upon the granting of the special hearing request herein absent the granting of this accompanying variance. They would therefore be placed in a position of not being able to act upon that which was a permitted activity and use. Likewise, the granting of the variance would do substantial justice to the applicants under those circumstances.

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

Therefore, in all manner and form, I find that the variance requested can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R. as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995). *McLean v Soley*, 270 Md. 208 (1973).

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

THEREFORE, IT IS ORDERED, by the Administrative Law Judge for Baltimore County this 15 day of June, 2011 that the Petition for Special Hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("BCZR.") as follows:

- A modified parking space and loading space plan in accordance with BCZR Section 409.12.B; and
- A use permit for the use of land in a residential zone for parking facilities to meet the requirements of Section 409.6 of the BCZR, pursuant to Section 409.8 of the BCZR; and
- Access through a residential zone for a commercial use in accordance to the Zoning Commissioner's Policy Manual (ZCPM) Section 102.6.A.3,

be and are hereby GRANTED;

IT IS FURTHER ORDERED THAT the Petition for Special Hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("BCZR.") as follows:

- Off-site parking spaces for uses other than residential and lodging, within 500 feet walking distance of a building entrance to use that such spaces serve in accordance with BCZR Section 409.7.B.1,

be and hereby is RENDERED MOOT;

IT IS FURTHER ORDERED that the Petition for Variance relief as follows:

- To allow a 10 foot buffer and setback for parking in a RTA in lieu of the required 50 foot buffer and the 75 foot setback in accordance with BCZR Section 1B01.1B.1.e.(5), be and they are hereby GRANTED.

The relief granted herein is subject to the following conditions:

1. Petitioners are advised that they may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. All landscaping buffers and lighting required herein shall be approved by Avery Harden, Baltimore County Landscape Architect.
3. Hours of delivery shall be limited to 9:00 am – 7:00 pm.
4. Petitioners shall utilize a durable, dustless surface in parking areas.
5. All parking areas granted under this Order shall be striped by Petitioners.

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

Signed
LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS:pz