

IN RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE
NW side of Old Harford Road, 242' SW	*	OFFICE OF
of c/line of Bedlington Road	*	ADMINISTRATIVE HEARINGS
9 th Election District	*	
5 th Councilmanic District	*	FOR BALTIMORE COUNTY
(8820 Old Harford Road)	*	
 Robert W. and Mary A. Gorman and David M. and Donna M. Saffer <i>Petitioners</i>	*	Case No. 2011-0323-SPHXA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for consideration of Petitions for Special Hearing, Special Exception and Variance filed by Robert W. and Mary A. Gorman and David M. and Donna M. Saffer, the legal property owners. Petitioners are requesting Special Hearing relief in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to determine if a proposed building connection (smoker’s pavilion) constitutes a building addition. Petitioners are also requesting Special Exception relief from Section 204.3.B.2.a of the B.C.Z.R. to allow construction of a 3,890 square foot Class B office building addition. In addition, Variance relief is being sought from Sections 204.4.C.5 and 204.4.C.9.c(2) of the B.C.Z.R. to permit a proposed addition with a rear yard setback of 6.75 feet in lieu of the required 30, and to permit a landscape buffer of 2.7 feet in lieu of the required 10 feet. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the requested relief were Robert Gorman and David Saffer, property owners. The site plan was prepared by Development & Design Solutions,

LLC. There were no Protestants in attendance, although a letter opposing the requests was received on the day of the hearing from Ruth Baisden.

Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The Office of Planning (by letter dated June 17, 2011) does not oppose the requests “due to the fact that existing site and paving can accommodate the additional parking required for the building addition.” The Office of Planning’s letter also contained certain recommendations and requests designed to integrate the proposed addition into the surrounding uses, and for clarity and ease of reference a copy of that correspondence is attached hereto.

Testimony and evidence revealed that the subject property is approximately 19,128 square feet, zoned R.O. (Residential Office), and is improved by an existing two-story, 1,661 square foot building with surrounding deck, and existing two-car garage that is to be razed. Petitioners have owned the building for over 11 years, and Mr. Gorman (who is an architect) occupies one floor of the office space with his firm, and the other floor is occupied by a long-term commercial tenant. Petitioners presented architectural elevations which depict the proposed addition, which will be connected to the existing structure with a covered passageway, which Mr. Gorman referred to as a “smoker’s pavilion.”

After due consideration of the testimony and evidence presented, I am persuaded to grant the relief requested.

As to the special hearing request under B.C.Z.R. § 500.7, I find that the proposed passage way constitutes a building addition as envisioned under the B.C.Z.R. The proposed passage way will facilitate the handicapped entrance to the existing structure, which is required under the Americans with Disabilities Act Accessibility Guidelines. As such, the covered walkway is “functional” in the truest sense of the term, and is not being proposed to scurt the regulations.

As to the request for special exception under § 502 of the B.C.Z.R., I also believe Petitioners are entitled to such relief.

Of course, special exception uses are presumptively valid, People's Counsel v. Loyola College, 406 Md 54, 77 n. 23 (2008), and no evidence was offered here to rebut the presumption.

A review of the site plan reveals that the subject property is bordered on the north by a Taco Bell (with a drive thru facility) and to the west by a nail salon and automotive detailing facility. To the south is a plumber's office and garage, and across Old Harford Road are residential dwellings. The Petitioners' proposed office addition is obviously a less intense use than the fast food restaurants and other consumer facilities in this vicinity. No evidence was presented to suggest that Petitioners' current or proposed use of the property would overcrowd the area, cause traffic congestion or otherwise have a negative impact on the neighborhood, and I find that Petitioners have satisfied the elements set forth in B.C.Z.R. § 502.1.

As to the variance request, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Specifically, the site is zoned RO, and the "front" of the site faces Old Harford Road, across which is DR zoned land, with residential dwellings. This caused Petitioners to propose the building addition at the "rear" of their lot, which abuts other (in my opinion) more intense and intrusive commercial uses. Doing so in turn generated the need for variance relief in that the proposed addition was positioned and oriented as far as possible from Old Harford Road and the adjoining DR zone.

I further find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship in that Petitioners would be unable to construct the addition they have designed and planned at great expense. Finally, I find the variance can be granted in strict

harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare.

As noted above, a letter was received on the day of the hearing from Ms. Ruth Baisden, President of the Greater Parkville Community Council (GPCC). A copy of that correspondence is being included in the record of this case.

Therein, Ms. Baisden indicates she oppose the Petitioners' requests, and I will address each of the concerns identified. Initially, Ms. Baisden expresses concern with the size and use of the proposed addition, although the Petitioners' proposal satisfies the floor area ratio of the zone and the use (office) is also a permitted one in the RO zone. Of course the size of the addition does generate the need for the setback (variance) relief, and Ms. Baisden's letter does oppose that request.

While I am mindful of and appreciate the community's concerns, I at the same time believe Petitioners are proposing a reasonable use of their property and doing so in a manner that will minimize its impact of the surrounding environs. As noted earlier, the office addition will be oriented to the rear of the Petitioners' lot, away from Old Harford Road and the DR zoned properties. The proposed addition (shown on Petitioners' Exhibit 2) will be attractive and professionally constructed and will be an asset to the community. In fact, the proposed two story addition will provide for the homeowners on the east side of Old Harford Road a "visual buffer" from the Taco Bell and automotive service business which adjoin the subject property to the north and west.

Ms. Baisden notes that many offices and store fronts in the area are vacant, and cites this as another reason for the community's opposition. While that may be the case, that is not a factor that is dispositive in a zoning case. Petitioners are experienced professionals and businessmen of

long-standing in the community, and both testified that they will be able to construct and offer for lease at attractive rates this additional office space. Petitioners have owned the subject property for over 11 years, and they believe the proposal will be economically viable, and I cannot gainsay that assessment.

Ms. Baisden's final concerns related to additional impervious surface and off street parking. As to the former, the Department of Environmental Protection and Sustainability (DEPS) indicated it did not oppose the Petitioners' requests, and nothing in this Opinion and Order should be construed as excusing Petitioners' compliance with DEPS regulations. As to the off street parking, Petitioners' site plan (Exhibit 1) indicates that the number of spaces proposed exceeds the requirements set forth in B.C.Z.R. § 409.

Pursuant to the advertisement, posting of the property and public hearing held, and after considering the testimony and evidence offered, I find that Petitioners' Special Hearing, Special Exception and Variance requests should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County this 8 day of July, 2011 that Petitioners' Special Hearing request in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), be and is hereby GRANTED, and the building connection (smoker's pavilion) shall constitute a building addition; and

IT IS FURTHER ORDERED that Petitioners' Special Exception request from Section 204.3.B.2.a of the B.C.Z.R. to allow construction of a 3,890 square foot office building addition, be and is hereby GRANTED.

IT IS ALSO ORDERED that Petitioner's Variance request from Sections 204.4.C.5 and 204.4.C.9.c(2) of the B.C.Z.R. to permit a proposed addition with a rear yard setback of 6.75 feet

in lieu of the required 30, and to permit a landscape buffer of 2.7 feet in lieu of the required 10 feet, be and is hereby GRANTED.

The relief granted herein is conditioned upon Petitioners' compliance with the Office of Planning's comments set forth in its June 17, 2011 correspondence, attached and incorporated herein.

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

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

Attachment

JEB:pz