

<p>IN RE: PETITIONS FOR SPECIAL EXCEPTION AND VARIANCE NE side of Middletown Road; 1,270 ft. NW of the c/l of Beckleysville Road 6th Election District 3rd Councilmanic District (20231 Middletown Road)</p> <p>FWS Real Estate, LLC <i>Legal Owner</i></p>	<p>* * * * *</p>	<p>BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY</p> <p>Case No. 2011-0335-XA</p>
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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Office of Administrative Hearings for consideration of Petitions for Special Exception and Variance filed by FWS Real Estate, LLC, the legal property owner. The Special Exception is from Section 230.3 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow in a BL zone a community building to be utilized for recreational use and two racquetball courts. There is an existing retail liquor store on the subject site. The Variance request is from Section 409.6 of the B.C.Z.R. to allow 21 parking spaces in lieu of the required 37 parking spaces. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the Special Exception and Variance requests were Suzanne Fisher, Managing Member for FWS Real Estate, LLC, the legal property owner, and Anthony J. DiPaula, Esquire, attorney for the Petitioner. Also attending was Bruce E. Doak with Gerhold Cross & Etzel, Ltd., the professional land surveyor who prepared the site plan.

Testimony and evidence revealed that the property is irregular in size, split zoned BL and RC 2, and is located on the northeast side of Middletown Road and northwest of Beckleysville Road.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments were received from the Fire Marshal's Office dated May 19, 2011, which indicate that the proposed building must comply with the current Baltimore County Fire Prevention Code. Comments from the Office of Planning dated June 17, 2011, indicate that Office does not oppose the request, provided that prior to the application for any building permit, a landscape and lighting plan, along with architectural elevations, including signage, are submitted to the Office of Planning for review and approval. If the signage, lighting and hours are amenable to the rural character of this area, the Planning Office believes that this request will not be detrimental to the health, safety, or general welfare of the surrounding community.

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. Petitioner's expert, Bruce Doak, testified (by way of proffer) that the community building proposed would satisfy § 502.1 of the B.C.Z.R. In addition, Petitioner presented letters of support from adjoining neighbors and the Freeland Legacy Alliance. See Exhibit 5.

With respect to the variance sought under Section 409.6 of the B.C.Z.R. to allow 21 parking spaces in lieu of the required 37 parking spaces, I also find that relief should be granted. As an initial matter, the adjoining carry-out restaurant (the Red Café) has indicated it no longer needs to utilize the seven (7) parking spaces on Petitioner's property that were the subject of Zoning Case 01-514-SPH. As such, the relief is actually to allow 28 spaces in lieu of the required 37.

I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request, that strict compliance with the Zoning Regulations would result in practical difficulty or unreasonable hardship, and that the variance request 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. The property is split zoned BL and RC 2, which is obviously a unique scenario. If Petitioner was obliged to create nine additional parking spaces, additional impervious surface would be created and the Department of Environmental Protection and Sustainability may very well impose onerous and costly stormwater management requirements. This would further impact the bucolic and rural setting in this part of the County, and there was no evidence or intimation that a parking shortage would exist at this time.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and after considering the testimony and evidence offered, I find that Petitioner's Special Exception and Variance request should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 24 day of June, 2011 that Petitioner's request for Special Exception relief from Section 230.3 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to allow a community building to be constructed and utilized for recreational use and two racquetball courts (in addition to the existing retail liquor store on the site) 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 allow 21 parking spaces in lieu of the required 37 parking spaces be and is hereby GRANTED.

The granting of the above relief shall be subject, however, to the following condition:

1. Petitioner may apply for any permits required and be granted same upon receipt this Order; however, Petitioner is hereby made aware that proceeding at this time is at his 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. The proposed building shall be designed and constructed so as to meet the applicable provisions of the current Baltimore County Fire Prevention Code.
3. Petitioner must comply with the requirements imposed by the Office of Planning, as set forth in that Agency's correspondence dated June 17, 2011, and attached and incorporated herein as an Exhibit.

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

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

Attachment

JEB/pz