

<b>IN RE: PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND SPECIAL EXCEPTION</b>		
S side of Frederick Road, 244 feet	*	OFFICE OF
W of Nine Mile Circle		
1 <sup>st</sup> Election District	*	ADMINISTRATIVE HEARINGS
1 <sup>st</sup> Councilmanic District		
<b>(169 Frederick Road)</b>	*	FOR BALTIMORE COUNTY
John M. Strycula	*	<b>Case No. 2012-0089-SPHX</b>
<i>Petitioner</i>		

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings for consideration of Petitions for Special Hearing and Special Exception filed by John M. Strycula, the property owner. The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve a modified parking plan (per B.C.Z.R. 409) to allow the existing two-way 11 foot wide drive aisle in lieu of a 20 foot wide drive aisle required pursuant to Section 409.4.A; to allow an 18 foot wide parking aisle in lieu of the 22 feet required pursuant to Section 409.4.C; to allow a dead-end aisle with no backup area as required pursuant to Section 409.8.A.5; and to permit the existing 200 year old building to remain as is and to permit it to be used for the use proposed, including the 11 square foot area of the building wall that is in the RO zone. In addition, Petitioner requests Special Exception relief pursuant to B.C.Z.R. Section 230.3 to allow living quarters in a commercial building. 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 requests were John M. Strycula and Richard Matz with Colbert Matz Rosenfelt, Inc., the professional engineer who prepared the site plan. Deborah Dopkin, Esquire, appeared as counsel and represented the Petitioner. There were no

Protestants or other interested persons present at the hearing, and the file does not contain any letters of protest or opposition.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The Office of Planning made the following comment:

“The Office of Planning is concerned that an 11 foot wide two-way driveway may not be adequate at this particular location because of the steepness of the driveway, the proximity of the driveway to the Frederick Road/River Road intersection, and the high volume of fast moving traffic on Frederick Road. The Administrative Law Judge should consult with the Bureau of Traffic Engineering and Transportation Planning on this matter.”

Given that Frederick Road is a state highway (Rt. 144), the State Highway Administration has informed the Petitioner a “District office permit” will be required in connection with the reconstruction of the entrance/exit at the site. See Exhibit 5. I trust the SHA will ensure that the ingress/egress at the site is safe, and I believe their review will address the concerns raised by the Office of Planning. Comments were received from the Department of Environmental Protection and Sustainability which indicate that development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code). DEPS submitted the following additional comments:

1. A Forest Buffer Easement based upon a DEPS-approved wetland delineation report, steep slopes & erodible soils analysis and Department of Public Works-approved 100-year floodplain must be established on this site.
2. The project, as proposed, will require an administrative variance to the Water Quality Law be granted by the DEPS director.
3. The proposed project may require authorization from State/Federal Agencies for work in the 100-year floodplain.
4. All additional comments above must be addressed prior to issuance of any County permit.

Testimony and evidence offered at the hearing revealed that the subject property is approximately 1/3 acre in size, and is improved by a 200 year old stone house. The Petitioner

recently purchased the home and is undertaking significant renovations. Petitioner plans to operate a bicycle shop on the first floor of the building, with storage in the basement and a tenant living on the second floor, hence the need for special exception relief.

As for the special exception relief, Petitioner's expert Richard Matz testified that the tenant is currently living on the first floor of the home, and will relocate to the second floor when the bike shop opens. Mr. Matz testified that the living quarters in this commercial building would essentially continue the present state of affairs, and would pose no threat to public health, safety or welfare. Mr. Matz further opined that the proposal satisfied each of the factors set forth in B.C.Z.R. §502, and for those reasons I will grant the petition for special exception.

Special hearing relief under B.C.Z.R. §500.7 is sought for approval of a modified parking plan. Mr. Matz testified that the driveway entrance to the rear of the site is only 11 feet wide at its narrowest point, but indicated Petitioner (who also operates a paving company) is hoping to widen the drive to 15 feet if it will not compromise the root beds of two large trees in the area. In any event, Mr. Matz testified that much of the use and "traffic" entering and exiting the site will be by bicycle, not car, especially since the subject property was recently identified by the Baltimore County Pedestrian and Bicycle Access Plan as a "priority" area, See Exhibit 6.

In addition, Mr. Matz explained that the parking drive aisles at the rear of the site are 18 feet and 16 feet respectively, while the B.C.Z.R. requires 20 feet. Again, the engineer opined that more than enough parking existed at the site - - 12 spaces are provided under the plan, see Exhibit 1 - - and that vehicles would have ample room to negotiate turns and safely exit the premises. Finally, Petitioner presented photos depicting ample parking areas just down Frederick Road from his property, which would provide cyclist's who arrived by car (with their bike on a rack) plenty of

alternative venues for parking. In short, I believe Petitioner's proposed parking plan is more than sufficient for the operation proposed, and will therefore grant the special hearing relief.

An additional legal issue concerned the zoning designations for the site. While the vast majority of the site is zoned BL, there is a "sliver" of the property zoned RO. Mr. Matz presented a colored plan showing the small area zoned RO (see Exhibit 2), and he opined - - and I would tend to agree - - that the intent of the 1976 comprehensive rezoning was to have the entirety of the parcel zoned BL, but that property lines were much less accurately drawn at that time. In addition, the RO zoned area is extremely small and is essentially limited to a portion of one of the foundation walls for the structure on the site. The commercial operation (bike shop) is permitted of right in a BL zone, and the operations of that enterprise will be within the BL zone. Even if that were not the case, the RO zoned portion of the site is so inconsequential when compared to the site in its entirety, and would in no event prevent the operation of the bicycle shop at the subject premises.

Pursuant to the advertisement, posting of the property, and public hearing, and after considering the testimony and evidence offered, I find that Petitioner's Special Exception and Special Hearing requests should be GRANTED.

THEREFORE, IT IS ORDERED this 22nd day of November, 2011, by this Administrative Law Judge, that Petitioner's request for Special Hearing filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve a modified parking plan to allow the existing two-way 11 foot wide drive aisle in lieu of a 20 foot wide drive aisle required pursuant to Section 409.4.A; to allow an 18 foot wide parking aisle in lieu of the 22 feet required pursuant to Section 409.4.C; to allow a dead-end aisle with no backup area as required pursuant to Section 409.8.A.5; and to permit the existing 200 year old building to remain as is and to permit it

to be used for the use proposed including the 11 square foot area of the building wall that is in the RO zone, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's Special Exception request pursuant to B.C.Z.R. Section 230.3 to allow living quarters in a commercial building, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for its building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at their 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 ZAC comments made by the Department of Environmental Protection and Sustainability dated October 7, 2011, a copy of which is attached hereto and made a part hereof.

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

JB/sma