

IN RE: PETITIONS FOR SPECIAL	*	BEFORE THE
EXCEPTION AND VARIANCE		
Corner of NE side of Sweet Air Road	*	OFFICE OF
and NW side of Hampshire Knob Road		
10 th Election District	*	ADMINISTRATIVE HEARINGS
3 rd Councilmanic District		
(3430 Sweet Air Road)	*	FOR BALTIMORE COUNTY
Grahamp Limited Partnership	*	
<i>Legal Owner</i>		
David Key, <i>Contract Purchaser</i>	*	
Petitioners		Case No. 2012-0093-XA

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Special Exception and a Petition for Variance filed by the Petitioner, Grahamp Limited Partnership by and through Francis X. Borgerding, Jr., Esquire. Petitioners request a special exception as follows:

- Section 230.3 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow a community building to be utilized for recreational use in addition to the existing carry-out restaurant; and
- Section 259.3.B.3 of the B.C.Z.R. to allow a building which exceeds the requirements of Section 259.3.C.1 to be permitted by special exception only when the proposed development is in compliance with site design guidelines and performance standards which are part of a duly adopted master plan for the district.

Petitioners are also requesting Variance relief as follows:

- From Section 409.6 of the B.C.Z.R. to allow 51 parking spaces in lieu of the required 65; and

- From Section 259.3.C.1.a of the B.C.Z.R. to allow a gross floor area of 6,997 square feet on the ground floor in lieu of the required 6,600 square feet; and
- From Section 259.3.C.3.a of the B.C.Z.R. to allow the existing landscaping to meet the requirements; and
- From Section 259.3.C.3.b of the B.C.Z.R. to allow 0% of the parking lot to be pervious in lieu of the required 7%, and allow zero (0) trees per 8 parking spaces in lieu of the required one (1) tree.

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

Appearing at the requisite public hearing in support of the petition were David Key, the contract purchaser, and Bruce Doak with Gerhold Cross & Etzel, Ltd., the professional land surveyor who prepared the site plan. Francis X. Bordering, Jr., Esquire attended as attorney for the Petitioner. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R. There were no Protestants or other interested persons in attendance.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Department of Environmental Protection and Sustainability dated November 2, 2011, which states:

“Future changes or building permits related to this site will need Groundwater Management review.”

In addition, comments were received from the Department of Planning dated November 9, 2011, which states:

“The Department of Planning has reviewed the Petitioner's request and accompanying site plan. The Petitioner requests a special exception from

Section 230.3 of the BCZR to allow a community building to be utilized for recreational use, in addition to the existing carryout restaurant.

In the alternative the Petitioner is requesting a special exception from Section 259.3B3 of the BCZR to allow a building which exceeds the requirements of Section 259.3.C.1 to be permitted by special exception only when the proposed development is in compliance with site design guidelines and performance standards which are part of a duly adopted master plan for the district.

The Petitioner is also requesting the following variances to the BCZR:

- Section 409.6- to allow 51 parking spaces in lieu of the required 65.
- Section 259.3.C.1.a- to allow a gross floor area of 6,997 square feet on the ground floor in lieu of the required 6,600 square feet.
- Section 259.3.C.3.a- to allow the existing landscaping to meet the requirements.
- Section 259.3.C.3.b- to allow 0% of the parking lot to be pervious in lieu of the required 7% and to allow zero trees per eight parking spaces in lieu of the required one tree.

The Department of Planning supports the Petitioner's request for a special exception and variance. According to the Petitioner, they are looking to fill a vacancy in an existing commercial rural shopping center with a small 24-hour access fitness club where there was previously a video store. The Petitioner also explained that they are not looking to redevelop the site and that the building, lighting, and parking layout are to remain as is. The Petitioner also stated that they are planning to add a new sign to the building facade where the previous video store sign was located and will add to the small free-standing sign at the entrance. There is a sidewalk along the road frontage and mature landscaping on the front and sides of the property. However the internal landscaping along the building front and parking aisles has been neglected.

It is therefore in this Department's opinion that the landscaping along the building frontage and parking aisles needs to be enhanced or completely redone. If no external redevelopment is to take place, with the exception of a new façade sign and or enhanced landscaping along the building frontage and parking aisles, then the Department of Planning believes that this request will not be detrimental to the health, safety, or general welfare of the surrounding community."

Mr. Doak was called to testify and was qualified as an expert witness in land surveying, zoning, land planning and the subdivision process in Baltimore County. He is familiar with the subject site which is located in the Jacksonville area, zoned BL-CR in the front of the property and

RC 5 in the rear. The structure Petitioner wishes to use was built in the 1980s and was a former Blockbuster movie location. It is shared with a Papa John's Pizza location.

The witness noted that there is no specific Baltimore County Code section for the approval of a gym or health club. He was contacted by the Petitioner to pursue a special exception to permit a gym/health club and snack bar in what is classified as a community building. Accordingly, the alternative requests for special hearing were filed in this matter. The variances are requested in order to allow the use of the already existing facilities and improvements of the site by the Petitioner's gym/health club and snack bar.

Mr. Doak then addressed the requirements for the requested special exception. His description of the surrounding area and the specific physical arrangements of the site, were presented to support his opinion that Petitioner's proposed use would not generate any adverse effect above and beyond those inherently associated with such use, irrespective of its location within the immediate zoning area. He then turned the requirements set forth in B.C.Z.R. Section 502.1. He opined that the proposed use would not be detrimental to the health, safety or general welfare of the locality involved in that the prior as well as the proposed use generally conformed to the zoning and uses in the immediate area; that the use would not tend to create congestion in roads, streets or alleys given that the traffic generated by the proposed use is minimal; that the use would not create a potential hazard from fire, panic, or other danger, in that the surrounding roads are sufficient to support emergency vehicles and the local fire department is approximately 200 feet away from the subject site; that the use would not tend to overcrowd the land and cause undue concentration of population, based upon the estimates of use by the targeted patron group; that it would not interfere with adequate provisions for schools, parks, water, sewage, transportation, or other public requirements in that the Petitioner will be making no substantive changes to the

property, that the well and septic already in place will be sufficient for the new use, and that there are no schools nearby; that it would not interfere with adequate light and air, given the description of the project; that it would not be inconsistent with the purpose of the property's zoning classification, as it is permitted by special exception in this particular zone; that it would not be inconsistent with the impermeable surface and vegetative retention provisions of these zoning regulations as no changes to that which already exists for many years is being requested; and finally, that as this site is partially in an RC 5 zone, the request would not be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains as no changes will be made by Petitioner affecting those factors to any degree.

In addressing the four requested variances, the witness pointed to the mixed zoning of the site, that the already approved commercial use is more intensive than that which is proposed in the instant case, and that the parking arrangements, buffers, and landscaping are already existing, mature and coordinated, as factors which render the subject site unique. He specifically noted that the variance to Section 409.6 was appropriate, as the 51 spaces were already sufficient for the previous more intensive use of the site, and that there was insufficient space for the otherwise required 65 spaces; and that without this variance the use, if permitted, would be unable to operate. As to the variance to Section 259.3.C.1.a of the B.C.Z.R. Mr. Doak testified that the 6,600 square feet requirement of the CR overlay was intended to prevent tall buildings in the Resource Conservation zone. Here, he pointed out that the Petitioner intends to use only that square footage that has already been utilized for commercial purposes on the site. Without this requested variance, he does not believe the franchise services could be provided.

Addressing the requested variance to Section 259.3.C.3.a of the B.C.Z.R., Mr. Doak described the already existing landscaping as “adequate and exemplary,” needing no change.

As to the requested variance to Section 259.3.C.3.b of the B.C.Z.R., the witness likewise maintained that the existing conditions were appropriate to the previous more intensive use of the site and to alter it in the instant request would be an unnecessary burden upon the Petitioner.

Finally, the witness opined that all of the above variances, if granted, would have no adverse impact on the surrounding community.

Petitioner David Key took the stand and discussed his proposed uses’ 24 hours per day/7 days a week operating schedule, which is the paradigm required for this franchise operation. He discussed the security arrangements of the proposed gym, including individual card access to the club’s doors, as well as strategically placed cameras and “panic switches.” Further, he pointed to the lack of difficulties at the Perry Hall location, the number of employees, and his estimates are 6-12 patrons during the day, approximately 20 from 5:00 pm to 8:00 pm, and few or none after 8:00 pm. He believes that even at the peak evening hours, parking needs will be far below what already exists on site, let alone the 65 spaces required if the parking variance is not granted. He observed that the existing building is actually larger now than what the project requires. Given the four years since the previous tenant vacated, he maintains that his proposed use will be a true benefit to the surrounding community.

Mr. Glen Thomas, a neighbor and member of the Greater Jacksonville Association, testified that although he has no objection to Petitioner’s proposed business, he is opposed to and is concerned about the 24/7 routine of the proposed use, and the protection of the surrounding community, including questions about who will ultimately utilize the gym. He observed that the location offers limited police coverage and that the neighborhood volunteer fire department is not

manned 24/7. In addition, he has questions about potential noise and the congregating of young people at the Petitioner's location. He maintains that although the community was satisfied with the lighting of the site by the previous user, the lighting of the proposed use should comply with the Jacksonville Master Plan.

David Palmer, another neighbor, adopted the testimony and concerns presented by Mr. Thomas.

After reviewing the testimony and exhibits presented at the hearing, I agree with the Petitioner's witnesses that the requested special exception use is appropriate for the proposed location. Their testimony clearly establishes that the Petition for Special Exception meets the requirements of case law and specifically that of Section 502.1 of the B.C.Z.R.

Regarding the Petition for Variances, upon review of the testimony and evidence, I am likewise persuaded to grant the requested relief. Specifically, I find special circumstances or conditions exist that are unique to the subject property; and that practical difficulty in utilizing the property would be experienced by the Petitioner if the requested variances were not granted. Further, I find that there will be no adverse impacts caused by the granting of the variances. Finally, I find that the variance requests can be granted in harmony with the spirit and intent of the Zoning Regulations, and in such a manner as to grant relief without injury to the public health, safety, and general welfare.

Thus, the variance requested meets the requirements of Section 307 of the BCZR, as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered, I find that Petitioners' special exception and variance requests herein should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 8th day of December, 2011, by this Administrative Law Judge that Petitioners' request for special exception as follows:

- As to Section 230.3 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to allow a community building to be utilized for recreational use in addition to the existing carry-out restaurant,

be and is hereby GRANTED; and

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

- From Section 409.6 of the B.C.Z.R. to allow 51 parking spaces in lieu of the required 65; and
- From Section 259.3.C.1.a of the B.C.Z.R. to allow a gross floor area of 6,997 square feet on the ground floor in lieu of the required 6,600 square feet; and
- From Section 259.3.C.3.a of the B.C.Z.R. to allow the existing landscaping to meet the requirements; and
- From Section 259.3.C.3.b of the B.C.Z.R. to allow 0% of the parking lot to be pervious in lieu of the required 7%, and allow zero (0) trees per 8 parking spaces in lieu of the required one (1) tree,

be and are hereby GRANTED.

The relief granted is subject to the following:

1. Petitioners may apply for their 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 such time as the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

2. Compliance with the ZAC comments made by the Department of Planning dated November 9, 2011, and comments from Department of Environmental Protection and Sustainability dated November 2, 2011, copies of which are 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
LAWRENCE M. STAHL
Managing Administrative Law Judge for
Baltimore County

LMS:pz