

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
N/side of Eastern Avenue, 448.12' NW	*	OFFICE OF
of c/line of Rolling Mills Road		
(7933 Eastern Avenue)	*	ADMINISTRATIVE HEARINGS
15 th Election District		
7 th Council District	*	FOR
BaltGem Development Corp., et al	*	BALTIMORE COUNTY
<i>Legal Owners</i>		
Redner's Markets, Inc., <i>Lessee</i>	*	CASE NO. 2012-0246-SPHA
Petitioners		

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Hearing and Variance filed by the legal owners of the subject property, BaltGem Development Corp., et al, by Matthias D. Renner, Authorized Representative, and lessee, Redner's Markets, Inc. by Mark Hallacher, Authorized Representative ("Petitioners"). The Petitioners are requesting Special Hearing relief pursuant to § 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve a modified parking plan pursuant to § 409.12, and for such other and further relief as may be required by the Administrative Law Judge for Baltimore County. The Petitioners are also seeking variance relief from § 450.4 Attachment 1.5(d)(vi) of the B.C.Z.R., to permit three wall-mounted enterprise signs for the façade of Redner's Market (a separate commercial entity of a multi-tenant retail building with an exterior customer entrance) in lieu of the permitted one sign, and for such other and further relief as may be required by the Administrative Law Judge for Baltimore County. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibits 1A and 1B.

Appearing at the public hearing held for this case were Bill Monk with Morris & Ritchie Associates, Inc., the firm that prepared the site plan. Lawrence Schmidt, Esquire with Smith, Gildea & Schmidt, LLC appeared as counsel and represented Petitioners. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons in attendance, and the file does not contain any letters of opposition or protest.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. A ZAC comment was received from the Department of Planning, dated May 2, 2012, indicating no opposition; however, that Department proposed the following conditions with respect to the special hearing relief:

1. Remove parking spaces (5) along Eastern Avenue that are located within the required 10' landscape buffer,
2. Provide safe pedestrian connection to the various uses on the subject site, especially from Rolling Mill Road to the building to serve the primary residential community on the other side of Rolling Mill Road,
3. Provide a landscape plan for the subject site; attention should also be given to the perimeter of the property, which borders the public right-of-way, and
4. Remove parked/displayed vehicles and parking in general from the right-of-way along Rolling Mill Road.

In addition, a ZAC comment was received from the Development Plans Review (DPR), dated May 4, 2012, which duplicated condition #1 from the Department of Planning. DPR also recommended a landscape plan for the site, to comply with Sections III.A, B and E of the Landscape Manual for the parking lot area and along both Rolling Mill and Eastern Avenue street frontages. However, Counsel for the Developer presented at the hearing an e-mail from Mr. Kennedy dated May 23, 2012, indicating that Ms. Tansey's May 4, 2012, ZAC comment was withdrawn.

Testimony and evidence revealed that the subject property is approximately 20 acres in size, and is split zoned BM-AS, MH-IM, and ML-IM. The site contains an aging strip shopping center, and the Petitioners have recently opened a grocery store – Redner’s Market – in a long vacant space. The grocery store is employee owned, and would like to erect a sign indicating as much, as well as another sign indicating the store is open 24 hours a day. See Petitioners’ Exhibit 1B.

Based on the evidence presented, I find that the variance 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). I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Indeed, the site is irregularly shaped and the grocery store space is positioned at the rear of the site. The Petitioners’ store is setback approximately 830 feet from Eastern Avenue (See Petitioner’s Exhibit 1A), and the topography also drops off somewhat from Eastern Avenue, which greatly restricts visibility of the store. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioners.

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the absence of community opposition, and the additional signs are modest in size and will not appear cluttered, nor will they disrupt traffic in the area.

Petitioners also seek special hearing relief with respect to approval of a modified parking plan. Counsel for Petitioners explained that prior to 2009, the parking requirements for shopping centers greater than 100,000 square feet were determined by adding together all of the spaces required for each tenant in the center. Under the newer regulations, shopping centers with greater than 100,000 square feet (this center has over 840,000 square feet) must provide five spaces per

1,000 square feet of space. B.C.Z.R. § 409.6. Using that calculation, Mr. Monk explained that 885 spaces would be required, while the Petitioners have provided 1,106 spaces. But that regulation provides that “theaters” shall be considered separate uses; as such, the 885 space calculation is not correct under that provision.

Even so, the Petitioners have provided parking calculations on the plan (Exhibit 1) for each of the tenants, and the required total shown is 1,400, while 1,106 are provided. Based on Mr. Monk’s testimony and the photos submitted, it certainly does not appear as if the strip center is in anyway “underparked,” and approval of a modified parking plan as proposed by Petitioners will not be detrimental to the community safety and welfare.

Counsel for Petitioners indicated the landlord may be planning further improvements for the center, and it is possible that this issue would need to be revisited at a later date, depending on the nature of the improvements and category of tenants proposed for the site.

THEREFORE, IT IS ORDERED, this 25 day of May, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing seeking relief pursuant to § 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve a modified parking plan pursuant to § 409.12, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from § 450.4 Attachment 1.5(d)(vi) of the B.C.Z.R., to permit three wall-mounted enterprise signs for the façade of Redner’s Market (a separate commercial entity of a multi-tenant retail building with an exterior customer entrance) in lieu of the permitted one sign, be and is hereby GRANTED.

The relief granted herein shall be conditioned upon and subject to the following:

1. The Petitioners may apply for any required permits and may be granted same upon receipt of this Order; however the Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason, this Order is reversed, the Petitioners will be required to return and be responsible for returning said property to its original condition.

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

JEB:pz

_____Signed_____
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County