

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N/side of North Point Road, 133' SE of		
c/line of Green Hill Road	*	OFFICE OF
15 th Election District		
7 th Council District	*	ADMINISTRATIVE HEARINGS
(6808 North Point Road)		
	*	FOR BALTIMORE COUNTY
John R. Crunkleton, III, <i>Legal Owner</i>		
Primax Properties, LLC,	*	CASE NO. 2012-0269-A
<i>Contract Purchaser/Lessee</i>		
Petitioners	*	

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of a Petition for Variance filed by John B. Gontrum, Esquire with Whiteford, Taylor and Preston, LLP, on behalf of the legal owner, John R. Crunkleton, III, and the contract purchaser/lessee, Primax Properties, LLC (“Petitioners”). The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.), as follows:

- Section 409.6.A.2, to permit 30 spaces in lieu of required 50 spaces;
- Section 409.4.C., to permit a one-way aisle of 15.5' in lieu of required 16' with a parking angle of 60°, and
- Section 409.8.A.1 and the Landscape Manual, p.13, to permit a 0' landscape strip in lieu of required 10' strip with “Class A” screen for commercial interior road; at p. 9 to permit no screening adjacent to a street or public right-of-way in lieu of required “Class B” screening.

The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the variance request were John R. Crunkleton, III, legal owner, and a representative with Richardson Engineering, LLC, the consulting firm that prepared the site plan. John B. Gontrum, Esq., attended and represented Petitioners. 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.

Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. A ZAC comment was received from the Department of Planning on May 18, 2012, indicating their support provided certain concerns were addressed by Petitioners.

In addition, a ZAC comment was received from the Department of Environmental Protection and Sustainability (DEPS), dated May 18, 2012, indicating the Petitioner must satisfy certain Critical Area regulations (set forth in B.C.Z.R. § 500.14) given that the property is non-waterfront located within an Intensely Developed Area and is subject to the Critical Area 10% pollutant reduction requirements.

Testimony and evidence revealed that the subject property is 35,959 square feet (0.83 acres) and zoned BL - AS. The property is improved with a building constructed in the 1940s, which has been used for retail uses. Most recently, the space was used as a bowling alley, and Petitioners now propose to operate a Dollar General store at the location.

Based upon the testimony and evidence presented, I am persuaded to grant the request for variance relief. Petitioners argued that the parking regulations provide a separate test for variance relief, rather than the B.C.Z.R. § 307 standard applicable in most height and area variance cases. I agree, and believe the appropriate standard is whether the Petitioners would suffer a hardship if relief was denied, and whether the public's safety and welfare would be compromised. Essentially,

the inquiry is akin to special exception review and under B.C.Z.R § 502. See B.C.Z.R. §§ 409.12.B and 409.8.B.1.

Counsel explained that the Petitioners were going to raze a portion of the building in question, shown on Exhibit 1, which will provide 12 parking spaces. The Petitioners will no longer make use of the parking spaces in front of the building (along North Point Road), but will instead provide landscaping in that area, which has long been a goal of the County.

Nationwide, there are approximately 10,000 Dollar General stores, and Counsel explained the retailer employs a “template” within its organization calling for 30 parking spaces at its stores. This is the number of spaces proposed by Petitioners, while the B.C.Z.R. would require 50 spaces. Here, the Petitioners testified there has never been a shortage of parking through the many years that retail uses were conducted on site. As such, and given the absence of evidence to the contrary, I believe that 30 spaces will provide more than sufficient parking for Dollar General customers.

The Petitioners also seek variance relief with respect to the width of a drive aisle (15.52' is provided, while 16' is required by B.C.Z.R.). This is a matter of inches (less than 6 inches) and I do not believe variance relief in this regard would pose any danger to customers or the public at large.

The final two variances pertain to landscaping requirements imposed by the parking regulations. Again, this site has existed for over 70 years, and has had no landscaping provided during that time. The improvements planned by Petitioners will breathe life into what is now a “tired” structure, and the landscaping proposed along the North Point Road frontage will more than compensate for the absence of plantings along the interior and back of the site.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and after considering the testimony and evidence offered by the Petitioners, I find that Petitioners' variance request should be granted.

THEREFORE, IT IS ORDERED, this 14 day of June, 2012, by this Administrative Law Judge, that Petitioners' Variance requests from the Baltimore County Zoning Regulations (B.C.Z.R.), as follows:

- Section 409.6.A.2, to permit 30 spaces in lieu of required 50 spaces;
- Section 409.4.C., to permit a one-way aisle of 15.5' in lieu of required 16' with a parking angle of 60°, and
- Section 409.8.A.1 and the Landscape Manual, p.13, to permit a 0' landscape strip in lieu of required 10' strip with "Class A" screen for commercial interior road; at p. 9 to permit no screening adjacent to a street or public right-of-way in lieu of required "Class B" screening,

be and are hereby GRANTED.

The relief granted herein shall be subject to the following:

1. The Petitioner may apply for a building permit and may be granted same upon receipt of this Order. However the Petitioner is hereby made aware that proceeding at this time is at his 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 Petitioner will be required to return and be responsible for returning said property to its original condition.
2. The relief granted herein is expressly conditioned upon Petitioners' compliance with the ZAC comments of the Department of Planning, set forth in its memorandum dated May 15, 2012.

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

JEB:pz