

IN RE: PETITION FOR VARIANCE
SE side of Campbell Blvd.; 1,200'
1,200' NE of Philadelphia Road
14th Election District
6th Council District
(5325 Campbell Blvd.)

Campbell Boulevard I Business Trust
Legal Owners
Merritt Athletic Clubs LLC
Contract Purchaser/Lessee
Petitioners

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
*
* **CASE NO. 2012-0281-A**

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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 G. Scott Barhight, Esquire on behalf of the legal owner, Campbell Boulevard I Business Trust and the contract purchaser/lessee, Merritt Athletic Clubs LLC (“Petitioners”). The Petitioners are requesting Variance relief from Section 409.6.A.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a total of 264 parking spaces for a health/fitness/athletic club with an accessory commercial swimming pool in lieu of the required 425 parking spaces. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 4.

Appearing at the public hearing in support of the variance request was Terry Dezzutti for Merritt Athletic Clubs LLC and Stuart Foard for Merritt Properties, James Matis of Matis Warfield Consulting Engineers, the engineering firm that prepared the site plan, and Wes Guckert of The Traffic Group. G. Scott Barhight, Esquire attended as Counsel for the contract purchaser/lessee and Adam D. Baker, Esquire attended and represented legal owners. 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, and the file does not contain any letters of

opposition or protest.

A ZAC comment was received from the Department of Planning, requesting that Petitioners install sidewalks throughout the site and along Campbell Blvd. Petitioners indicated they were amenable to that request.

Testimony and evidence revealed that the subject property is of irregular dimensions, approximately 5 acres in size, and undeveloped. The Petitioners would like to construct a fitness/athletic club on the site which Terry Dezzutti (who has managed all of Merritt's clubs for 16 years) described as being a "low volume, high price" club. Mr. Dezzutti explained that the facility would be similar to Merritt's clubs in Towson and Eldersburg, and that in such a suburban model, the club would cater to families and in atmosphere would be akin to a country club. Mr. Dezzutti testified that in his experience Merritt employs a parking ratio of five or six spaces per 1,000 square feet and he said that the other clubs he manages have had no parking problems whatsoever at this ratio.

Petitioners next presented testimony from traffic engineering expert Wes Guckert. Mr. Guckert explained that the Institute for Transportation Engineering employs, as a national standard, a ratio of 6.0 spaces per 1,000 square feet for athletic clubs, while the Petitioners propose a slightly higher ratio of 6.7 per 1,000 square feet. Mr. Guckert testified that his firm performed parking lot occupancy counts for Merritt's Towson and Eldersburg clubs, and determined that Towson functioned at a ratio of 4.6 per 1,000 square feet and Elderburg at 3.4 per 1,000 square feet. In light of the above, he opined Petitioners were providing ample parking for the proposed use.

Petitioners' final witness was James Matis, P.E., who was accepted as an expert in the B.C.Z.R. and parking regulations. Mr. Matis testified he prepared the site plan for the case (Exhibit 4) and was quite familiar with the site. He explained that the five acre parcel at issue here was

unique, in that it had very limited frontage on Campbell Blvd., and was situated behind other properties which imposed certain site constraints. He opined that the variance relief would not be detrimental to the surrounding community, and that Petitioners would suffer a hardship if relief was denied, since they would be unable to construct the club at this site.

Based upon the testimony and evidence presented, I am persuaded to grant the request for variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioners.

Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md 53, 80 (2008).

Petitioners have met this test, as discussed above. In fact, I do not believe the variance relief will have any deleterious impact upon the surrounding community.

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 5 day of July, 2012, by this Administrative Law Judge, that Petitioners' Variance request from Section 409.6.A.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a total of 264 parking spaces for a health/fitness/athletic club with an accessory commercial swimming pool in lieu of the required 425 parking spaces, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. The Petitioners may apply for a building permit and may be granted same upon receipt of this Order. However the Petitioners are 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 Petitioners will 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 Planning dated May 31, 2012, 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.

JEB:pz

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County