

IN RE: PETITIONS FOR SPECIAL HEARING, *
SPECIAL EXCEPTION & VARIANCE *
(10845 Philadelphia Road) *
Martin G. Kutlik
Petitioner *

BEFORE THE
OFFICE OF
ADMINISTRATIVE HEARINGS
FOR BALTIMORE COUNTY
Case No. 2013-0037-SPHXA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of Petitions for Special Hearing, Special Exception and Variance filed by Jason T. Vettori, Esquire, on behalf of the legal owner, Martin G. Kutlik. The Petition for Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to: **(1)** approve a modified parking plan pursuant to § 409.12.B of the B.C.Z.R., and **(2)** For such other and further relief as may be deemed necessary by the Administrative Law Judge. A Petition for Special Exception was filed pursuant to § 204.3.B.2 of the B.C.Z.R., to: **(1)** approve a Class B Office Building, and **(2)** For such other and further relief as may be deemed necessary by the Administrative Law Judge. Finally, a Petition for Variance was filed pursuant to the B.C.Z.R. as follows: **(1)** From § 204.3.B.2.a, to permit up to 100% of the total adjusted floor area of the office building to be occupied by medical offices in lieu of the maximum permitted 25% of the total adjusted floor area, **(2)** From § 204.4.C.7, to permit a maximum lot size of 2.883 acres in lieu of the maximum lot size of 1 acre; and **(3)** For such other and further relief as may be deemed necessary by the Administrative Law Judge. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the requests were Martin G. Kutlik, legal owner, and William N. Bafitis, professional engineer with Bafitis & Associates, Inc., the consulting firm that prepared the site plan. Lawrence E. Schmidt, Esquire, with Smith, Gildea & Schmidt, LLC, appeared as counsel and represented the Petitioner. There were no opponents in attendance at the hearing. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. A ZAC comment was received from the Department of Environmental Protection and Sustainability (DEPS) on September 21, 2012 indicating that the development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (§§ 33-3-101 through §§ 33-3-120) of the Baltimore County Code (B.C.C.), the Forest Conservation Regulations (§§ 33-6-101 through 33-6-122 of the B.C.C.) and any future building permits for the site must be reviewed by Groundwater Management, since the property is served by a septic system. In addition, a ZAC comment was received from the Bureau of Development Plans Review (DPR) on September 6, 2012, indicating that the parking layout shown on the plan does not match that shown on aerial photograph, and signs should be posted to warn users that the lower half of the parking lot is within the 100-year floodplain. Furthermore, a ZAC comment was received from the Department of Planning (DOP) on October 15, 2012, as follows:

The Department of Planning has reviewed the petitioner's request and accompanying site plan. The applicant is requesting approval of a modified parking plan. Pursuant to Section 409.12.B of the BCZR, a modified parking plan may be approved if there is undue hardship. The applicant has not indicated the reason for which the requested modification is being made. The Department of Planning visited the site and it isn't evident why the parking requirements would create an undue hardship for this particular property.

The driveway for the subject property does not meet the minimum width requirement. Pursuant to Section 409.4.A of the BCZR, driveways are required to be at least 20 feet in width for two-way movements. Near the street right-of-way line, the existing driveway is 18 feet wide and further into the site the driveway is only 12 feet wide. The safety of the narrow driveway width is exacerbated by the presence of two brick columns located along both sides of the driveway at its connection to Philadelphia Road. This particular driveway provides access from a busy arterial road to a large parking lot and therefore, for safety reasons, it should be in compliance with the minimum requirements.

The petitioner requests a variance to permit up to 100 percent of the total adjusted floor area of the proposed Class B office building to be occupied by medical offices in lieu of the maximum permitted 25 percent specified in Section 204.3.B.2.a of the BCZR. The 25 percent limitation is a use regulation that is contained within Section 204.3 (Use Regulations for the RO Zone). The BCZR do not authorize use variances.

The existing building is very attractive. If the proposed addition is approved, it should be architecturally consistent with the existing building. Elevation drawings shall be submitted for review and approval by the Department of Planning before the issuance of any building permits.

Comments were also received from the Office of People's Counsel on September 20, 2012, indicating their opposition. Mr. Zimmerman expressed concern with the variance request for medical office use, and also identified several other issues he considered problematic, including deficient side yard setbacks and landscape buffer areas.

The subject property consists of approximately 2.3 acres and is zoned RO, MLR and ML. All physical improvements at the site are located in the RO zone. The Petitioner formerly lived at the home on site, but it is now used for office space by a firm founded by Petitioner, Physicians Medical Billing. As the name implies, this firm provides services for the medical profession, but there are not health care providers on site and no care or treatment of any kind is rendered at the location. The Petitioner's business has been successful, and he now wishes to expand, hence the present case.

At the outset of the hearing, Petitioner's counsel indicated he was withdrawing without prejudice that portion of the variance request seeking 100% medical office use. Mr. Schmidt

indicated he received and reviewed Mr. Zimmerman's letter, and did not want to engage in protracted litigation concerning whether the request constituted a "use variance," as opposed to an area or dimensional variance as allowed under B.C.Z.R. § 307.

SPECIAL HEARING

The special hearing request sought approval of a modified parking plan, as shown on Exhibit 7. Under note #16 on the plan, 56 parking spaces are required, while 51 are provided. The Petitioner indicated there has never been a shortage of parking on site, and the special hearing relief is sought to essentially "leave things as they are." With respect to the width of the drive aisles, those conditions have existed on site for many years without complication, and the use in question is office space, rather than medical office uses, which would generate far more traffic and raise greater concerns. There is no evidence that the existing parking arrangement has had any negative impact upon the community, and I believe that would remain the case after the 3,000 square foot office addition is completed. As such, I will approve the modified parking plan, as shown on Exhibit 7.

VARIANCES

Petitioner seeks variance relief with respect to the maximum lot size for Class B office buildings, per B.C.Z.R. § 204.4.C.7. While there is a residence (used as such) to the east of this site (known as 10903 Philadelphia Road), the adjacent lot to the west (10839 Philadelphia Road) is zoned ROA and MLR, and is used as an electrical contractor's warehouse. As such, the maximum lot size is two acres while the subject property is 2.8 acres. The Petitioner requested, and was granted, a change from ROA to RO zoning in the 2012 Comprehensive Zoning Map Process (CZMP), and the change was sought so that Petitioner could expand his business into a

Class B office building. The Councilman was obviously aware this was the impetus for the zoning change requested, and thus this request is the next logical step in the process.

The property is uniquely shaped and is also split-zoned (RO, MLR and ML), which qualifies it as unique under pertinent case law. If the B.C.Z.R. were strictly enforced, Petitioner would suffer a practical difficulty in that he would not be able to expand his business, despite having secured the requisite zoning to do so. As such, the variance request concerning lot size will be granted.

Having said that, it may be that relief is not even required with regard to this issue. As noted above, all improvements are in the RO zone, as is the proposed addition. The RO zoned portion of the property is 0.92 acres, the balance being ML and MLR. In these circumstances, it is at least arguable that the “lot size” referenced in B.C.Z.R. § 204.4.C.7 concerns land with RO zoning, and the regulation would not make sense to apply to a split-zoned property in the aggregate, especially since none of the office building uses are in the ML or MLR zones.

According to Petitioner, the recent zoning change (which occurred after the petition was filed in this case) has necessitated additional variance relief, and counsel sought leave to amend the petition to seek relief for a 10' setback in lieu of the 20' required by B.C.Z.R. § 204.4.C.4. Counsel explained that in the ROA zone, the DR 3.5 setback of 10' was appropriate as shown on the original plan. Exhibit 1. When the property was rezoned to RO, a 20' side setback applied. Mr. Bafitis made redlined changes to the plan to reflect their request. Exhibit 7. The same relief is also sought with respect to the 20' landscape buffer required under B.C.Z.R. § 204.4.C.9.c.(1).

As noted above, I believe the site possesses the requisite characteristics for variance relief under Maryland law, and the 10' side setback and landscape buffer requests seem reasonable. I also do not believe that the granting of this relief will negatively impact the adjacent dwelling,

and the Petitioner will be required to have the landscaping approved by the County's landscape architect prior to permit issuance.

SPECIAL EXCEPTION STANDARDS

Special exception uses are presumptively valid and consistent with the comprehensive zoning plan, People's Counsel v. Loyola College, 406 Md. 54, 77 n. 23 (2008), and no evidence was offered here to rebut the presumption. Petitioner's expert, Mr. Bafitis of Bafitis & Associates, Inc., testified via proffer that the project would satisfy Section 502.1 of the B.C.Z.R., and I concur. The Petitioner has operated his business on site for many years without complaint, and I do not believe the modest addition proposed would negatively impact the neighborhood. Petitioner indicated he had a good relationship with all of his neighbors, and it is worth noting again that no letters of opposition or protest were received on this case.

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 Hearing, Special Exception and Variance requests should be granted.

THEREFORE, IT IS ORDERED this 29th day of October, 2012, by this Administrative Law Judge, that Petitioner's request for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to approve a modified parking plan pursuant to § 409.12.B of the B.C.Z.R., be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioner's request for Special Exception filed pursuant to § 204.3.B.2 of the B.C.Z.R., to approve a Class B Office Building, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioner's request for Variance from § 204.3.B.2.a of the B.C.Z.R., to permit up to 100% of the total adjusted floor area of the office building to be

occupied by medical offices in lieu of the maximum permitted 25% of the total adjusted floor area, be and hereby is MOOT, the request having been withdrawn by counsel.

IT IS FURTHER ORDERED that Petitioner's request for Variance from § 204.4.C.7 of the B.C.Z.R., to permit a maximum lot size of 2.883 acres in lieu of the maximum lot size of 1 acre, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioner's request for Variance from § 204.4.C.4 of the B.C.Z.R., to permit a 10' side yard setback in lieu of the required 20' setback, be and is GRANTED, and

IT IS FURTHER ORDERED that Petitioner's request for Variance from § 204.4.C.9.c.(i) of the B.C.Z.R., to permit a 10' landscape buffer in lieu of the required 20', be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for his appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his 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. Unless extended by subsequent Order, the special exception approval granted herein must be utilized within two (2) years from the date hereof.
3. Petitioner must comply with the ZAC comments received from DEPS; a copy of which is attached hereto and incorporated herein.

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

JEB/dlw

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County