

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(10015 Pulaski Highway)	*	OFFICE OF
15 th Election District		
6 th Councilman District	*	ADMINISTRATIVE HEARINGS
CSS Crest, LLC		
<i>Petitioner</i>	*	FOR BALTIMORE COUNTY
	*	Case No. 2013-0047-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed by CSS Crest, LLC. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to determine whether or not the Administrative Law Judge should modify the plan approved in Case No. 99-125 SPHA; to modify and affirm the relief granted in Case No. 91-77-SPHA as modified by Case No. 99-125-SPHA, and to remove Condition #6 as set forth in Case No. 91-77-SPHA. In addition, a Petition for Variance was filed pursuant to § 238.2 of the B.C.Z.R., to approve a side yard setback of 9' in lieu of the required 30'. The subject property and requested relief is more fully depicted on the redlined site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the requests was Chris Serbeck with Crest Lock, and Bernadette Moskunus with Site Rite Surveying, the firm that prepared the site plan. Deborah C. Dopkin, Esquire appeared as counsel and represented the Petitioner. 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 in attendance, and the file does not contain any letters of protest or opposition.

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 26, 2012, indicating that 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.]) as well as the Forest Conservation Regulations (§§ 33-6-101 through 33-6-122 of the B.C.C.). In addition, a ZAC comment was received from the Department of Planning (DOP) on September 13, 2012 indicating the front elevation of proposed building 'A' shall be architecturally consistent with the front of the existing building as shown on the elevation drawings and a landscape plan shall be prepared for review and approval by Jean Tansey, Baltimore County Landscape Architect.

The subject property is 1.192 acres and is split-zoned ML-IM, ML-AS and BR-AS. The Petitioner acquired the property in February 2012, and would like to remove some dilapidated buildings on site, and construct an addition to the existing office building which fronts on Route 40. Crest Lock is a 3rd generation family-run business, and the Petitioner would like to expand and improve the site, which is located within the Pulaski Highway Redevelopment Area. The site also lies within a commercial enhancement area as shown on Master Plan 2020, and the improvements proposed herein would certainly seem consistent with the goals the County has set for this area.

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 Petitioner (who only recently acquired the property) must contend with existing site conditions. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty, given that Petitioner would be unable to construct the improvements as planned. 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 opposition from the community. In addition, the variance relief is being granted on the north side of the site, at which point the property adjoins a motel as seen in the photos (Exhibit 5). The property boundary in this area contains mature trees and vegetation, which will also blunt any impact that the relief might otherwise have on the adjoining owner.

The Petitioner also sought special hearing relief, which would modify, in accordance with the terms of this Opinion and Order, prior zoning Case Nos. 91-77-SPHA and 99-125-SPHA, which were marked and accepted as Exhibits 2 and 3, respectively. As indicated at the hearing, I believe the terms of those Orders would be implicitly modified by the very issuance of the order in the present case, but Petitioner's counsel wisely sought to have those modifications explicitly stated, which will eliminate any doubt on that score.

In addition, Petitioner sought to have condition #6 removed from the Order in Case No. 91-77-SPHA. That condition provided that the "subject site shall not be sublet or utilized by more than one business entity or commercial venture." Exhibit 2, p.5. That case involved the prior owner of the site (John Bunting), who had constructed without permits or approvals of any kind several buildings on this site. In the opinion, then Zoning Commissioner Haines noted that the "site, as it exists today, is overdeveloped and congested and leaves much to be desired regarding vehicular flow." Exhibit 2, p.2.

It is those buildings, of course, that the Petitioner proposes to raze, and the site will be much improved in appearance and function due to the Petitioner's efforts. At present, it is only Crest Lock which conducts business at the site, but Petitioner indicated that in light of current economic conditions, he would like to leave himself the option of subleasing a portion of the property if market conditions made that necessary. This seems like an entirely reasonable request, and is after all one of the many rights enjoyed by fee simple owners of real property. This condition was imposed over 20 years ago, and the case arose in a much different factual setting than the present case. The site will no longer be cluttered by a hodgepodge of dilapidated buildings, and "Condition 6" is simply unnecessary (and maybe inappropriate) at this juncture.

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 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 modify in accordance with the terms of this Order the plan approved in Case No. 99-125 SPHA; to modify and affirm in accordance with the terms of this Order the relief granted in Case No. 91-77-SPHA as modified by Case No. 99-125-SPHA; and to remove Condition #6 as set forth in Case No. 91-77-SPHA, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioner's Variance request from § 238.2 of the B.C.Z.R., to approve a side yard setback of 9' in lieu of the required 30', be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for its appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its 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. Petitioner must comply with the ZAC comments submitted by the DOP and DEPS, which are 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