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| IN RE: PETITIONS FOR SPECIAL HEARING * | BEFORE THE |
| AND VARIANCE | |
| (6015 Rossville Boulevard) * | OFFICE OF |
| 15 th Election District | |
| 7 th Councilmanic District * | ADMINISTRATIVE HEARINGS |
| N.M. Phillips Co., Inc., <i>Legal Owner</i> | |
| Rossville Holdings LLC, * | FOR BALTIMORE COUNTY |
| <i>Contract Purchaser</i> | |
| Petitioners * | Case No. 2013-0203-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 Kira N. Brucker, Esquire, on behalf of the Petitioners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to approve work (grading and paving) in the riverine floodplain and a waiver from § 32-4-414 of the Baltimore County Code (“B.C.C.”), to allow large utility truck parking in a 100 year riverine floodplain area. The Variance petition seeks relief from B.C.Z.R. §§ 255.1 and 238.2, to allow a rear yard setback of 5ft. in lieu of the required 30 ft. Although the petition was filed by both the legal owner and contract purchaser, it is the latter that actively participated at the hearing, and this Opinion and Order will refer to “Petitioner” (in the singular) to refer to Rossville Holdings, LLC. 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 was Glen Hastings and James Simon, both with Union Electric Co., and Patrick C. Richardson, Jr. with Richardson Engineering, LLC, the consulting firm that prepared the site plan. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

Zoning Advisory Committee (ZAC) comments were received and are included in the file. The only substantive comment was submitted by the Director of the Department of Public Works (DPW). Mr. Adams, in correspondence dated March 26, 2013 advised that his agency did not oppose the special hearing relief pertaining to the floodplain, provided the Petitioner made certain notations on the plan and erected signs in the area warning of the potential for flooding.

The subject property is 1.98 acres in size and is zoned ML-IM. The property is improved with a large warehouse-style building, as shown in the color photos. Petitioner's Exhibit 4. The building was constructed in 1987. At present, Petitioner is the contract purchaser of the property, and it hopes to move its electrical contracting business to the site.

With regard to the petition for special hearing, Mr. Richardson testified that site conditions and topography dictate that Petitioner construct the planned improvements where indicated on the plan, to the south and east of the existing warehouse. Petitioner's Exhibit 1. Mr. Richardson testified in his opinion the proposed construction and grading in the riverine floodplain would not cause any additional flooding to offsite properties, and a note to that effect was included on the plan. Petitioner's Exhibit 1. In addition, County engineers reviewed the proposal and did not offer any opposition to the request. As such, the petition for special hearing will be granted.

Based upon the testimony and evidence presented, I will also grant the request for variance relief. 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).

The Petitioner has met this test. The site is of irregular dimensions (shaped like a trapezoid) and at least 40% of the site lies within the 100-year floodplain. These features make the property unique. The Petitioner would experience a practical difficulty if the regulations were strictly enforced, since it would be unable to expand the warehouse to accommodate its growing business. Finally, I do not believe the grant of variance relief would endanger the public's health, safety and welfare.

Pursuant to the advertisement, posting of the property, and the 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 22nd day of April 2013, by this Administrative Law Judge, that Petitioner's request for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to approve work (grading and paving) in the riverine floodplain and a waiver from § 32-4-414 of the Baltimore County Code ("B.C.C."), to allow large utility truck parking in a 100 year riverine floodplain area, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioner's request for Variance pursuant to §§255.1 and 238.2 of the B.C.Z.R, to allow a rear yard setback of 5ft. in lieu of the required 30 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for 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.

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/dlw