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| IN RE: PETITIONS FOR SPECIAL HEARING | * | BEFORE THE |
| AND VARIANCE | | |
| (6314 Falls Road) | * | OFFICE OF |
| 3rd Election District | | |
| 2nd Councilmanic District | * | ADMINISTRATIVE HEARINGS |
| Kim Hammond | | |
| Petitioner | * | FOR BALTIMORE COUNTY |
| | * | Case No. 2013-0265-SPHA |

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed by Leslie Pittler, Esquire on behalf of Kim Hammond, legal owner. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), as follows: (1) to approve an amended site plan for Case No. 85-256-A; and (2) to approve a modified parking plan for an existing parking facility. The Variance petition seeks relief from B.C.Z.R. as follows: (1) to approve a 10' side yard setback in lieu of 30'; and (2) reduction of 200' setback requirement for animal boarding places, kennels and pet shops in office, business and manufacturing zones pursuant to B.C.Z.R. § 421.2. 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 3A and 3B.

Appearing at the public hearing in support of the requests was Steven Broyles, the engineer that prepared the site plans. Leslie Pittler, Esquire appeared and represented the Petitioner. Several citizens attended the hearing, and their concerns will be addressed later in this Opinion. Barbara Guarnieri, of Ruxton-Riderwood Lake Roland Area Improvement Association (RRLRAIA) attended the hearing and indicated her association took no position on the case. The file reveals that the Petition was advertised and the site was posted as required by the Baltimore County Zoning Regulations.

Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) dated June 18, 2013 and from the Bureau of Development Plans Review dated May 24, 2013. Both agencies noted that the parking facility has functioned effectively since 1986, and that while it does have deficiencies, no improvements were suggested.

The subject property is 0.9 acres in size and is zoned BR. The property has been an animal hospital for many years. A major addition was constructed in 1986, at which time the Deputy Zoning Commissioner approved a 10 ft. side yard setback (in lieu of 30 ft). See Order in case no.: 86-256-A, Petitioner's Exhibit 1. At present, the Petitioner proposes to construct a second story addition to accommodate a pharmacy, which Mr. Broyles indicated was mandated by federal licensing authorities. The footprint or ground floor area of the building will not increase.

At the hearing, two of the Petitioner's neighbors objected to the petition. Pete Belitsos, who owns 6302 Falls Road and Jessica Schuler, who owns 6305 Falls Road, both complained about the excessive noise from barking dogs and the inadequacy of parking on Petitioner's site. Photos were submitted showing that cars were parked in Petitioner's lot in a haphazard fashion, including in cross-hatched areas designating loading zones and such. See Protestants' Exhibit 1. It was abundantly clear from the testimony that there is a great deal of animosity between Petitioner and these neighbors.

While I have no doubt that the dogs boarded on the site make a great deal of noise (another neighboring owner, Mark Schlossberg at 1406 Shoemaker Road, confirmed this fact, and he also noted that the Falls and Shoemaker Road intersection was extremely crowded), I do not believe the petition can be denied on this basis. After researching this issue in some detail, it appears as if there exists a regulatory/enforcement vacuum with respect to noise generated by a

business. In 2012 (House Bill 190) the State of Maryland divested itself of enforcement authority for State noise pollution standards. Though State regulations (COMAR 26.02.03.01) do impose maximum allowable noise levels for industrial and commercial land, enforcement is the responsibility of local government, and at present the Baltimore County Code (BCC) addresses only “domestic noise,” which by definition excludes noise associated with a business. BCC § 17-3-101 et. seq.

In addition, while the undisputed testimony was that the dogs are loud, there was no testimony or evidence presented showing that the noise levels rose above the 67 or 75 dBA (for commercial and industrial properties, respectively) provided by state regulations. As such, I do not believe this Petition can be denied on this basis.

The other issue concerns the parking facility for the Petitioner’s business. Both the comments from the county agencies and the photos presented by Mr. Belitsos reveal that the parking arrangement is less than ideal. Notes 9 and 10 on the site plans (Petitioner’s Exhibits 3A and 3B) indicate that a sufficient number of spaces exist which are paved and striped. Mr. Belitsos indicated he phoned the zoning office and was told that parking for an animal hospital must be provided at 4.5 spaces per 1,000 square feet, while the plan uses a 3.3 spaces ratio (i.e., “general office” category from B.C.Z.R. § 409.6). The B.C.Z.R. does not contain a category for veterinary hospital, and in 1986 the County applied a ratio of 3.0 spaces per 1,000 square feet. See Petitioner’s Exhibit 1. Thus, I believe the 3.3 ratio is an appropriate one, and the zoning office did not make any comment to the contrary.

The real deficiency concerns the layout of the spaces, and the parking at the site is somewhat disorganized and chaotic. But at the same time, there was no testimony that customers of Petitioner’s business would park at other locations across Falls or Shoemaker

Roads. The site is bounded on three sides with dense vegetation that not only creates a visual buffer, but also creates an insular setting. To the extent parking deficiencies exist, they are contained within the Petitioner's site and do not spillover onto neighboring properties. As such, I will approve the modified parking plan pursuant to B.C.Z.R. §§ 409.12 and 409.8.B.1, which will essentially maintain the status quo at the site.

Based upon the testimony and evidence presented, I will also grant the request for variance relief, although it is not clear that such relief is required in the first instance. The 10' side yard variance was granted in case No.: 85-256-A, and such relief runs with the land. The 200' setback requirement imposed by B.C.Z.R. § 421 is arguably inapplicable given that the animal hospital was in existence before this regulation was adopted in 1967, and would qualify as a nonconforming use. Even so, I will consider this a Petition for Variance, as filed.

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 Petitioner must contend with site conditions that have existed for over 25 years, and thus the site is unique for zoning purposes. If the regulations were strictly enforced, the Petitioner would not be able to operate his business, which would clearly constitute a practical difficulty or hardship. 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 9th day of July 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."), as follows: (1) to approve an amended site plan for Case No. 85-256-A; and (2) to approve a modified parking plan for an existing parking facility, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioner's request for Variance as follows: (1) to approve a 10' side yard setback in lieu of 30' ; and (2) to approve reduction of 200' setback imposed by B.C.Z.R. § 421.2, as shown on the site plan admitted as Exhibit 3A, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. 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 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. Petitioner must submit to the Department of Planning for approval prior to issuance of building permits elevation drawings of the proposed veterinary pharmacy.

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/sln