

IN RE: PETITIONS FOR SPECIAL HEARING,	*	BEFORE THE
SPECIAL EXCEPTION & VARIANCE	*	OFFICE OF
(11303 Beach Road)	*	ADMINISTRATIVE HEARINGS
11 th Election District	*	FOR BALTIMORE COUNTY
6 th Council District	*	Case No. 2016-0064-SPHXA
11303 Beach Road, LLC, <i>Legal Owner</i>	*	
Petitioner	*	

* * * * *

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 on behalf of 11303 Beach Road, LLC, the legal owner (“Petitioner”).

The Petition for Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve a modified parking plan and for a determination of the required number of parking spaces and their configuration as more particularly shown on the site plan filed with the Petition.

A Petition for Special Exception was filed pursuant to B.C.Z.R. §1A01.2.C.7 to permit a community building owned by a nonprofit civic or improvement association and used by its members and guests for recreational, social, educational, or cultural activities. Finally, a Petition for Variance seeks approval for side yard setbacks of 5 ft. in lieu of the 35 ft. required.

Appearing at the public hearing in support of the requests was George Prochaska and Charles Wallis, a professional engineer (and member of the community) who signed and sealed the site plan. Chris Corey, Esq., represented the Petitioner. There were no protestants and/or interested citizens in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Zoning Advisory Committee (ZAC) comments were

submitted by the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR).

The subject property is approximately 0.281 acres in size and is zoned RC 2. The property was purchased by Petitioner in 2008, and is used as the headquarters for the Lorely Beach Community Association. The property is improved with a single family dwelling and detached garage, both of which are in poor condition. Petitioner proposes to raze the existing structures and construct in essentially the same footprint a 2,800 square foot community center. To do so requires zoning relief.

SPECIAL HEARING

The special hearing concerned the parking for the proposed community building. This case is somewhat unique in that the Petitioner not only owns the subject property (which based on the testimony of Mr. Prochaska has space for parking at least 6 vehicles) but also leases from Baltimore County an unimproved 0.6 acre parcel adjacent to the subject property. The County leases the property to the Petitioner for the “nominal rent” of \$1.00 per year, and specifies in the lease the use is for a “parking lot” to be used in connection with a proposed “clubhouse for use by the community.”

Based on testimony at the hearing, I believe 25 parking spaces is sufficient for the proposed use. The community has leased this property from the County since 2009, and has since that time held meetings and events in the existing dwelling on the subject property. The president of the community association, George Prochaska, testified he has lived in the area all of his life and that parking has never been a problem at the site. Mr. Prochaska also noted parking is allowed on Beach Road (on which the subject property fronts), although he did not recall visitors needing to do so when attending community meetings or events at the site. In these

circumstances, I do not believe the “parking lot” needs to be paved and striped in accordance with the Regulations. In fact, the Petitioner would be unable to do so without the County’s approval. In addition, the property is within the Critical Area, and additional impervious surfaces would be detrimental to the environment as well.

SPECIAL EXCEPTION

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. Schultz v. Pritts, 291 Md. 1 (1981). The Schultz standard was revisited in People’s Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use.

No such evidence was presented in this case, and the petition will be granted. Petitioner noted the new building will be located farther from the water than is the current single family dwelling, and the side yard setbacks will be increased as well. In these circumstances I do not believe the use will be detrimental to the community.

VARIANCES

Based upon the testimony and evidence presented, I will also grant the petition for variance.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

The Petitioner has met this test. The property is waterfront, narrow (50 ft.) and extremely deep (250 ft.) and is therefore unique. If the B.C.Z.R. were strictly interpreted, the Petitioner would suffer a practical difficulty since it would be unable to construct the proposed community building. 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 lack of County and/or community opposition.

THEREFORE, IT IS ORDERED this 4th day of November, 2015, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R) to approve a modified parking plan, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception filed pursuant to B.C.Z.R. §1A01.2.C.7 to permit a community building owned by a nonprofit civic or improvement association and used by its members and guests for recreational, social, educational, or cultural activities, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to B.C.Z.R. §1A01.3.B.3 to allow side yard setbacks of 5 ft. in lieu of the 35 ft. required, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. The special exception must be utilized within three years of the date hereof.

3. No lighting fixtures or illumination is permitted on the “parking lot” area leased from Baltimore County.
4. Petitioner shall provide no less than 25 passenger vehicle parking spaces (total), which may be situated on the subject property and/or the unimproved lot leased from Baltimore County. Petitioner shall not be required to comply with the “durable and dustless,” striping, and 10 ft. setback requirements of B.C.Z.R. §409.8.
5. Prior to issuance of permits, Petitioner must submit for approval by the DOP proposed building elevations.
6. Prior to issuance of permits, Petitioner shall submit to DPR a revised site plan (containing sufficient detail to enable agency review) showing the proposed location and orientation of the 25 parking spaces. Following that agency’s review, Petitioner shall provide landscaping as determined in the sole discretion of the Baltimore County Landscape Architect.

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