

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(9727 Pulaski Hwy.) *	OFFICE OF
15 th Election District	
6 th Council District *	ADMINISTRATIVE HEARINGS
Mo's White Marsh LLC, <i>Legal Owner</i>	
Petitioner *	FOR BALTIMORE COUNTY
	Case No. 2014-0056-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 John E. Raine, III, Esquire, on behalf of Mo's White Marsh LLC, the legal owner. The Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."): (1) to permit 75 parking spaces in lieu of the minimum required 133 spaces; and (2) to approve an amendment to the site plan previously approved in Case No. 07-479-SPHA. The Variance petition seeks relief from B.C.Z.R., §409.6 to allow 75 parking spaces to be provided in lieu of the required 133 spaces. 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 4.

Appearing at the public hearing in support of the requests was Candus Mullins and Geoffrey C. Schultz, a professional land surveyor from Polaris Land Consultants. John E. Raine, III, Esquire appeared and represented the Petitioner. The file reveals that the Petition was advertised and the site was posted as required by the Baltimore County Zoning Regulations. There were no Protestants in attendance, and the file does not contain letters of protest or opposition.

The only substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), which indicated that it did not oppose the petition, provided the Petitioner satisfies the B.C.Z.R. requirements for such relief.

The subject property is 0.981 +/- acres in size and is zoned ML-IM & ML-AS. The property is improved with a two story building that accommodates a carry out store, restaurant, and (on the second floor) an apartment. In Case No. 07-479-SPHA, former Zoning Commissioner Wiseman recounted the zoning history of this property dating back to 1975; as such, I will not repeat that here. For present purposes, it suffices to say that the Petitioner proposes to construct a 760 square foot (20' x 38') deck on the premises for outdoor dining when weather permits. This improvement generates the need for additional parking spaces, and the Petitioner has sought zoning relief given that it cannot comply with the requirements of B.C.Z.R. §409.

As did Commissioner Wiseman in the earlier case noted above, I believe that a modified parking plan is the more appropriate avenue for relief in this case. Mr. Schultz, who was accepted as an expert, opined that the Petitioner satisfied the requirements set forth in B.C.Z.R. §§ 409.12 & 502.1, and that the relief would not have a detrimental impact upon adjacent properties. He noted the site is surrounded by commercial and industrial uses, and indicated that the restaurant's employees are permitted (and instructed) to park at the contractor's storage yard next door which, pursuant to the agreement attached as Exhibit 5, provides twelve (12) parking spaces for this purpose. Ms. Mullins, from Mo's Restaurant, testified that parking has never been a problem, and she indicated the outdoor deck would in reality not increase the demand for parking, since it will be a seasonal amenity serving essentially the same customer base. She also indicated that neither patrons nor employees park in the adjacent automobile dealership, which was a concern raised in the DOP's ZAC comment.

Since the petition for special hearing will be granted, I will dismiss without prejudice the petition for variance, which seeks the same relief.

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 request should be granted.

THEREFORE, IT IS ORDERED this 7th day of November, 2013, 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."): (1) to permit 75 parking spaces in lieu of the minimum required 133 spaces; and (2) to approve an amendment to the site plan previously approved in Case No. 07-479-SPHA, as shown on Petitioner's Exhibit 4, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to B.C.Z.R. §409.6 to allow 75 parking spaces to be provided in lieu of the required 133 spaces, be and is hereby DISMISSED WITHOUT PREJUDICE.

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 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.

JEB/sln

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County