

IN RE: PETITIONS FOR SPECIAL	*	BEFORE THE
EXCEPTION AND VARIANCE	*	OFFICE OF
(8121 Belair Road)	*	ADMINISTRATIVE HEARINGS
14 th Election District	*	
5 th Council District	*	
White Marsh Storage, LLC.	*	
<i>Legal Owner</i>	*	
Peak Acquisitions, LLC.	*	FOR BALTIMORE COUNTY
<i>Lessee</i>	*	
Petitioners	*	Case No. 2016-0009-XA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 8121 Belair Road. The Petitions were filed on behalf of White Marsh Storage, LLC, the legal owner of the subject property and Peak Acquisitions, LLC, lessee (“Petitioners”). The Special Exception Petition seeks relief per Baltimore County Zoning Regulations (B.C.Z.R.) §236.2 to permit living quarters in a commercial building in the BR zone. The Petition for Variance seeks relief per Baltimore County Zoning Regulations (B.C.Z.R.) §238.2 to permit a side yard setback of 12 ft. in lieu of the required 30 ft. and rear yard setbacks of 25 ft. and 20 ft. in lieu of the required 30 ft. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners’ Exhibit No. 1.

Appearing at the hearing in support of the petitions was Alex Watkins of Hill Management Co. Adam Baker, Esq. represented the Petitioners. Two adjoining neighbors (Howard and Elva Martens) attended the hearing to obtain additional information about the zoning requests.

The Petition was advertised and posted as required by the B.C.Z.R. Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case.

Substantive ZAC comments were received from the Department of Planning (DOP) and the State Highway Administration (SHA). The comments from these agencies will be included as conditions in the Order below.

The subject property is approximately 8.995 acres and is zoned BR (Business Roadside). The site was previously occupied by a lumber company, although that business ceased operation many years ago. Petitioners propose to construct and operate at the property a self-storage business that will occupy seven buildings (shown on the plan as Buildings A-G), and a two-story office with a 1,500 sq. ft. apartment on the second floor. The facility will have access points off of both Belair and Bucks School House Roads. Both access points will feature gated and locked entrances, and the individual storage units will be accessed by a key-pad system. The business will operate on a 24/7 basis, and the special exception would allow a business manager or caretaker to reside at the site, which is according to Petitioners customary in these self-storage operations.

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.

Josh Sharon, a licensed professional engineer accepted as an expert, testified via proffer that the operation would not adversely impact the community, and he opined Petitioners satisfied the requirements of B.C.Z.R. §502.1. This testimony was not contradicted and the petition will be

granted.

VARIANCE

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).

Petitioners have met this test. The property has irregular dimensions and an unusual shape. As such it is unique. If the B.C.Z.R. were strictly interpreted Petitioners would suffer a practical difficulty, in that they would be unable to construct the project 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.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 28th day of September, 2015, that the Petition for Special Exception under B.C.Z.R. §236.2 to permit living quarters in a commercial building in the BR zone, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance per Baltimore County Zoning Regulations (B.C.Z.R.) §238.2 to permit a side yard setback of 12 ft. in lieu of the required 30 ft. and rear yard setbacks of 25 ft. and 20 ft. in lieu of the required 30 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners would be required to return the subject property to its original condition.

2. Petitioners must obtain from the State Highway Administration (SHA) an entrance permit to reconstruct the existing entrance onto U.S. 1
3. Petitioners must comply with the August 11, 2015 DOP ZAC comment, a copy of which is attached hereto.
4. The special exception area (permitting living quarters in a commercial building in the BR zone) shall include only the 1,500 sq. ft. apartment on the second floor of the office, as shown on Petitioners' Ex. 1.

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