

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(8901 Clement Avenue)	*	OFFICE OF
9 th Election District		
5 th Council District	*	ADMINISTRATIVE HEARINGS
Noor Properties, LLC		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner		
	*	Case No. 2016-0097-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of Noor Properties, LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to the Baltimore County Zoning Regulations (“B.C.Z.R.”) seeking: (1) A request for confirmation that the approvals in Case No. 2014-0235 SPHA authorize the revised site layout; and (2) In the alternative, a modified parking plan pursuant to § 409.12.B of the B.C.Z.R. modifying sections:

a. 409.8.A.1 of the B.C.Z.R. to permit a modification of the landscape strip requirements to allow a 6 ft. strip in lieu of the required 10 ft. strip along Clement Avenue and a 3 ft. strip in lieu of the required 6 ft. strip between paved surfaces and lot/lease lines adjacent to commercial uses or zones; and

b. 409.8.A.4 of the B.C.Z.R. to permit a parking space in a surface parking facility for a nonresidential use to be located 6 ft. from the right-of-way line of a public street in lieu of the required 10 ft. setback.

In addition, a Petition for Variance was filed seeking relief pursuant to § 232.2 of the B.C.Z.R. to permit a 6 ft. side yard setback in lieu of the required 10 ft. side yard setback. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 2.

Appearing at the public hearing in support of the requests was Dr. Narender Bharaj and professional engineer John Demos from State Line Engineering, LLC, who prepared the site plan. Jason T. Vettori, Esq. with Gildea & Schmidt, LLC represented the Petitioner. There were no protestants 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 received from the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP).

The subject property is 0.409 acres and is zoned BL. The property is improved with a two-story residential dwelling constructed in 1918. Petitioner proposes to raze the structure and construct a new two-story office building on the site. In 2014, Dr. Bharaj proposed to construct a three-story office building (Exhibit 1) at the site, and he was granted variance and special hearing relief to do so in Case No. 2014-0235-SPHA. The Petitioner has in the interim modified the plans and now proposes to build a smaller office building at the site. Even though the current plan (Exhibit 2) increases the side yard and surface parking setbacks as shown on the original plan (Exhibit 1) the zoning office required Petitioner to again seek relief in connection with the modified proposal. While I believe the variance and special hearing relief granted in the earlier case would “authorize the revised site layout” (per Special Hearing request #1 in this case), I will nonetheless consider the Petition anew and grant the relief requested.

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. As noted in the earlier Order, the property is irregularly shaped and is therefore unique. If the B.C.Z.R. were strictly interpreted, Petitioner would suffer a practical difficulty since it would be unable to construct the proposed office 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 23rd day of **December, 2015**, by this Administrative Law Judge, that the Petition for Special Hearing seeking approval of a modified parking plan pursuant to § 409.12.B of the B.C.Z.R. modifying sections:

a. 409.8.A.1 of the B.C.Z.R. to permit a modification of the landscape strip requirements to allow a 6 ft. strip in lieu of the required 10 ft. strip along Clement Avenue and a 3 ft. strip in lieu of the required 6 ft. strip between paved surfaces and lot/lease lines adjacent to commercial uses or zones; and

b. 409.8.A.4 of the B.C.Z.R. to permit a parking space in a surface parking facility for a nonresidential use to be located 6 ft. from the right-of-way line of a public street in lieu of the required 10 ft. setback, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief pursuant to § 232.2 of the B.C.Z.R. to permit a 6 ft. side yard setback in lieu of the required 10 ft. side yard setback, 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. Petitioner must submit for approval by Baltimore County a Landscape Plan for the site.
3. Prior to issuance of permits Petitioner must submit for review by the DOP proposed building elevations and details of proposed signage and dumpster enclosure.

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