

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(16 & 18 Willow Avenue)	*	OFFICE OF
9 th Election District		
5 th Council District	*	ADMINISTRATIVE HEARINGS
16 Willow Avenue, LLC, <i>Owner</i>		
	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No. 2016-0133-SPHXA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of an amended Petition for Special Hearing, Special Exception and Variance filed on behalf of 16 Willow Ave. LLC, legal owner (“Petitioner”). A hearing was conducted originally in this case on March 3, 2016. At the conclusion of that hearing Petitioner determined it needed to file an amended zoning petition containing a request for a special exception in addition to the special hearing and variance requests filed in the original petition. A hearing on the amended petition was held on May 27, 2016.

The amended zoning petition seeks Special Hearing relief pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows: (1) to allow business parking in a residential zone; and (2) to confirm the parking as indicated and approved on the 3rd Refined Development Plan for Towson Manor PUD (PAI #9-805). In addition, Petitioner seeks the following variances: (1) to allow no screening for the existing parking area next to a residential zone; (2) to allow existing off street parking to be partially located on an adjacent property; (3) to allow a minimum setback for an existing paved surface to a lot line of 0 ft. in lieu of the 6 ft.; (4) to allow a minimum 0 ft. existing landscape buffer in lieu of 20 ft.; (5) to allow a minimum parking space setback to an existing building of 3 ft. in lieu of the permitted 6 ft.; (6) to allow existing

parking to remain at a distance of 0 ft. to the ultimate right-of-way of an existing road in lieu of 10 ft. ; (7) to allow a landscape buffer next to residential zoned property of a minimum of 5 ft. in lieu of 20 ft.; (8) to allow a landscape buffer next to any non-residentially zoned property of 0 ft. in lieu of 10 ft.; (9) to allow an amenity open space area of 0 sq. ft. in lieu of the required 7% (108 sq. ft. +/-) of the existing interior parking lot located within the RO zone; (10) to allow the existing building of 6,320 sq. ft. more or less (FAR 0.158) in lieu of 4,024.9 sq. ft. (FAR 0.33); (11) to allow existing off street parking to be allowed in the front yard; (12) to allow an existing front building setback of 21 ft. in lieu of 25 ft.; (13) to allow an existing side yard setback of 0 ft. in lieu of 10 ft.; and (14) to allow an existing rear yard setback of 18 ft. in lieu of 30 ft.

Finally, the petition for special exception seeks: (1) to use the herein described property for Class "B" Office Building (principal building and accessory parking spaces on Parcel "A"); and (2) to use the herein described property for Class "B" Office Building (accessory parking spaces on Parcel "B"). An amended site plan was marked and accepted into evidence as Petitioner's Exhibit 2.

Appearing at the public hearing in support of the requests was professional engineer David Thaler. Andrew L. Jiranek, Esq. represented the Petitioner. Several neighbors attended the hearing to obtain additional information and to express concerns regarding the requests. The original and amended Petitions were advertised and posted as required by the Baltimore County Code and B.C.Z.R. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR).

The subject property is approximately 0.46 acres and is split-zoned RO, DR 5.5 and DR 16. The property is comprised of two distinct tax parcels known as Parcel 670 & Parcel 363. For purposes of this case the Petition and site plan reference "Parcel A" (approximately 0.45 acres) which is improved with a commercial office building and "Parcel B" (approximately .01 acres)

which is an unimproved sliver of land which would be used for off-street parking in conjunction with the Towson Manor PUD project.

SPECIAL HEARING

The first special hearing request seeks to permit business parking in a residential zone. The parking proposed would be located on Parcel “A,” which is zoned RO. The spaces would be used by clients and employees of Mr. Jiranek’s law firm, which is located within the commercial building existing on Parcel “A.” Mr. Jiranek explained that he acquired 18 Willow Ave. (corresponding to tax Parcel 363) in the last few years, and that he razed a dilapidated dwelling located thereon that had been used as a dormitory and fraternity for college students. Petitioner would create 14 off-street parking spaces on this parcel. Having heard the testimony and reviewed the plans, I find Petitioner has complied with the requirements set forth at B.C.Z.R. §409.8.B. To ensure the parking facility does not create an adverse impact upon the adjoining residential properties, conditions governing the use, hours of operation, landscaping and other requirements will be included in the final order, as contemplated by B.C.Z.R. §409.8.

The second special hearing request concerns certain off-street parking shown on the site plan and the PUD plan (Petitioner’s No. 3) for the adjoining Towson Manor community. The plans show nine (9) spaces located in this area, which adjoins a private alley. These parking spaces already exist and the Petition merely seeks confirmation of the arrangement shown on the aforementioned plans, which will be granted.

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. Mr. Thaler testified that in his opinion the Petitioner satisfies all requirements set forth in B.C.Z.R. §502.1 and the cases interpreting that regulation.

One neighbor (Cindy Bothwell) objected to the requests and testified that granting the relief would result in the loss of green space and create additional traffic and pollution. While these concerns may be well-founded, I believe they are the type of impacts that are inherent in the operation of any commercial office building and are not unique to, or more pronounced at, this location. As such, I do not believe this testimony can override the presumption in favor of the special exception.

VARIANCES

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).

Petitioner has met this test. The site is irregularly shaped and Petitioner must contend with long-existing site conditions. As such it is unique. Petitioner would experience practical difficulty if the regulations were strictly interpreted because it could not provide adequate parking for its business. Finally, I find that the variances (the bulk of which are sought to legitimize existing site conditions) 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 this 2nd day of **June, 2016**, 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): (1) to allow business parking in a residential zone (Parcel “A”); and (2) to confirm the parking (i.e., nine (9) spaces) as indicated and approved on the 3rd Refined Development Plan for Towson Manor PUD (PAI #9-805) (Parcel “B”), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception: (1) to use the herein described property for Class "B" Office Building (principal building and accessory parking spaces on Parcel "A"); and (2) to use the herein described property for Class "B" Office Building (accessory parking spaces on Parcel "B"), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to allow no screening for the existing parking area next to a residential zone; (2) to allow existing off street parking to be partially located on an adjacent property; (3) to allow a minimum setback for an existing paved surface to a lot line of 0 ft. in lieu of the required 6 ft.; (4) to allow a minimum 0 ft. existing landscape buffer in lieu of 20 ft.; (5) to allow a minimum parking space setback to an existing building of 3 ft. in lieu of the permitted 6 ft.; (6) to allow existing parking to remain at a distance of 0 ft. to the ultimate right-of-way of an existing road in lieu of 10 ft.; (7) to allow a landscape buffer next to residential zoned property of a minimum of 5 ft. in lieu of 20 ft.; (8) to allow a landscape buffer next to any non-residentially zoned property of 0 ft. in lieu of 10 ft.; (9) to allow an amenity open space area of 0 sq. ft. in lieu of the required 7% (108 sq. ft. +/-) of the existing interior parking lot located within the RO zone; (10) to allow the existing building of 6,320 sq. ft. more or less (FAR 0.158) in lieu of 4,024.9 sq. ft. (FAR 0.33); (11) to allow existing off street parking to be allowed in the front yard; (12) to allow an existing front building setback of 21 ft. in

lieu of 25 ft.; (13) to allow an existing side yard setback of 0 ft. in lieu of 10 ft.; and (14) to allow an existing rear yard setback of 18 ft. in lieu of 30 ft., 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 shall construct a gate to block driveway access to 18 Willow Avenue for evenings no later than 8pm, and during weekends; except the occupants and customers/clients of 16 Willow Avenue shall have access to said parking spaces.
3. The parking spaces at 18 Willow Avenue shall be limited to employees, tenants and customers/clients of the occupants at 16 Willow Avenue, or such office building on site, and shall not be leased, rented, donated or used by any others except residents of Towson Green via written agreement.
4. Petitioner shall construct a retaining wall and fence atop the retaining wall on the southern, northern, and eastern boundaries of 18 Willow Avenue as shown on Petitioner's site plan marked as Exhibits #1 and #2; said fence to be the same style, height and material to match the existing fence at 16 Willow Avenue; provided, however, that Petitioner shall reasonably accommodate the resident at 20 Willow Avenue regarding his view scape.
5. Petitioner will post a sign designating left turn only for motorists exiting the parking area at 18 Willow Avenue.
6. Petitioner will mount a security camera on the eastern side of the building at 16 Willow Avenue for surveillance of the parking area on 18 Willow Avenue; lighting on 16 Willow Avenue will be positioned and shaded as necessary to prevent lighting from being directed to the adjoining residential properties.

7. If 16 and 18 Willow Avenue and after acquired property, if any, at 14 Willow Avenue, is zoned Residential Office or any other Residential Office, Office, Business, Commercial, or Manufacturing Zone (that is, any zone other than Residential) or District overlay, development and uses on such properties shall be limited to a Class B office building under the Residential Office (R.O.) Zone regulations and requirements in effect as of the date of this Order; this shall not preclude Petitioner from seeking variances or waivers for the construction of the Class B office building, as provided in Baltimore County zoning and development regulations and under the procedures in effect for obtaining the same, including public notice and public hearings as required.
8. Petitioner shall notify Baltimore County agencies and Councilman David Marks that it wishes to amend its request to rezone its property to request only a rezoning of 18 Willow to R.O. As is its right, Petitioner reserves the right to later seek an amendment and modification of these conditions based on subsequent developments and the unique characteristics of its properties vis a vis adjoining properties and the development of Towson Green. These conditions are without prejudice to Petitioner or any other party to seek a further rezoning of the properties at issue. The parties recognize that these properties are in a transitional area bounded by a newly created PUD and Towson commercial properties, and shall strive to work together to accommodate their respective uses, while at the same time promoting harmonious and considerate relations with one another.
9. Prior to issuance of permits, Petitioner must submit for approval by Baltimore County landscape and lighting plans for the site.

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