

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(1609 E. Joppa Road)	*	OFFICE OF
9 th Election District		
5 th Council District	*	ADMINISTRATIVE HEARINGS
S & S Enterprises		
<i>Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner		
	*	Case No. 2017-0084-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 S & S Enterprises, legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R) to approve the use of seven (7) parking spaces in a residential zone (DR 5.5) for commercial use. In addition, a Petition for Variance seeks to permit the use of 39 parking spaces for the medical office/clinic in lieu of the required 47 parking spaces. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the requests was John Motsco, Michael Schaffer and David Strohming. Jeffrey H. Scherr, Esq. represented the Petitioner. Dale Cassidy, who lives near the property, attended the hearing to express concerns regarding certain aspects of the proposal. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. 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 .768 acres in size and is zoned BL, BL-AS and DR-5.5. The site is improved with a commercial building constructed in 1961. The site has been

vacant for approximately 18 months. At present, Total Renal Care, Inc. proposes to lease the property and operate a kidney dialysis clinic at the site. Given certain site constraints zoning relief is required with respect to the off-street parking for the clinic.

SPECIAL HEARING

The petition for special hearing seeks to permit commercial parking in a residential zone. While the great majority of the property is zoned B.L., a small portion along the southeast corner of the site is zoned D.R. 5.5. The immediately adjacent property is owned by Neighborspace, which operates a small Community park on the property.

Mr. Motsco explained prior tenants most likely used this small area for parking as well , as he opined Petitioner satisfied all requirements set forth in B.C.Z.R. §409.8. In these circumstances I do not believe granting the request would be injurious to the community and the petition will therefore be granted.

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).

Petitioner has met this test. The property has irregular dimensions and is therefore unique. Petitioner would experience practical difficulty if the regulations were strictly interpreted because it would be unable to lease the site for use as a dialysis clinic. Finally, as demonstrated

by the lack of any opposition, I do not believe granting the requests would have a detrimental impact upon the community.

THEREFORE, IT IS ORDERED this 12th day of December, **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) to approve the use of seven (7) parking spaces in a residential zone (DR 5.5) for commercial use, be and is hereby GRANTED.

IT IS FURTHER ORDERED the petition for variance to permit 29 parking spaces for the medical office/clinic in lieu of the required 47 parking spaces, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon 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. Prior to issuance of permits Petitioner must submit for approval by Baltimore County landscape and lighting plans for the property.

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