

IN RE: PETITIONS FOR SPECIAL HEARING,	*	BEFORE THE
SPECIAL EXCEPTION & VARIANCE	*	OFFICE OF
(1631 E. Joppa Road)	*	ADMINISTRATIVE HEARINGS
9 th Election District	*	FOR BALTIMORE COUNTY
5 th Council District	*	Case No. 2017-0188-SPHXA
1631 E. Joppa Road, LLC	*	
<i>Legal Owner</i>	*	
Entourage Development, LLC.	*	
<i>Contract Purchaser</i>	*	
Petitioners	*	
* * * * *		

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of Petitions for Special Hearing, Special Exception and Variance filed on behalf of 1631 E. Joppa Road, LLC, legal owner and Entourage Development, LLC, contract purchaser (“Petitioners”).

The Petition for Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”): (1) For confirmation that the approvals in Case Nos. 1957-4166-X, 1960-4992-X, 1960-5076, 1962-5697-A and 1962-5876-A authorize the revised site layout; and (2) In the alternative, a modified parking plan pursuant to Section 409.12.B of the Baltimore County Zoning Regulations (“B.C.Z.R.”) modifying sections: (a) 409.6.A.2 of the B.C.Z.R. to permit 44 parking spaces in lieu of the required 53 spaces; (b) 409.8.A.1 of the B.C.Z.R. to permit a modification of the landscape strip requirements to allow in lieu of the required 10 ft. strip and a 6 ft. strip between paved surfaces and lot/ lease lines adjacent to commercial uses or zones: (1) 0 ft. strip along the east side yard; (2) 0 ft. strip along the west side yard; (3) 7 ft. strip along the front yard; and (4) 6 ft. strip along the rear yard; (c) To permit a parking space in a surface parking facility for a non-residential use to be located 7 ft. from the right-of-way line of a public street in lieu of the required 10 ft. setback; (d) To permit the use of land in a residential zone for parking

facilities to meet the requirements of Section 409.6; and (e) To allow the loading and unloading of materials to take place during non-business hours.

A Petition for Variance seeks to permit a 0 ft. buffer and 0 ft. setback in lieu of the required 50 ft. buffer and 75 ft. setback in a Residential Transition Area (RTA). Finally, a Petition for Special Exception seeks to approve a drive-in restaurant.

Appearing at the public hearing in support of the requests was Tom Behrle, Paul Smith and professional engineer John Demos. Jason T. Vettori, Esq. represented Petitioners. Several members of the community (represented by J. Carroll Holzer, Esq.) opposed the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were submitted by the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). Neither agency opposed the requests.

The subject property is approximately 0.9 acres in size and is zoned BL & DR 5.5. The site is located near the intersection of Joppa Road and Loch Raven Blvd., and for over 60 years Baynesville Electronics operated their store at the property. The store, a community institution, closed its doors in 2016. The owners entered into a contract of sale with Entourage Development, which would operate a Sonic fast food restaurant at the property. To do so certain zoning relief is required, although most of the requests in the petition are necessary.

The community opposes the project, and believes the change from a commercial use to a fast food use will prove deleterious to the neighborhood. Neighbors expressed concern with noise, trash and congested traffic conditions along Joppa Road. In addition, the neighbors indicated several fast food outlets are located near the subject property, and that the Sonic proposal was simply “more of the same.”

Certain legislative provisions (i.e., Bill Nos. 36-13 and 79-15, Petitioners' Exhibit Nos. 19 & 20) influence the outcome in this case. First, the site is located within the Loch Raven Commercial Revitalization District. Petitioners' Exhibit No. 12. As such, the project is exempt from the Basic Services mapping standards. At present, the Joppa Road/Loch Raven Blvd. intersection is rated at a level-of-service "F" which (but for Bill 79-15) would prohibit development at the subject property. In addition, Bill 36-13 provides that business parking in a residential zone is exempt from the RTA setback requirements when the property is located in a commercial revitalization district. That same legislation permits such parking "by right if there is an existing parking facility."

Variations

The variations requested in the petition seek relief from the RTA setback and buffer requirements. Since the property is within a revitalization district, such variations are not required. As such, this aspect of the petition will be dismissed without prejudice.

Special Exception

The petition for special exception seeks to use the property for a "drive-in restaurant." That term is defined as a "retail outlet where food or beverages are sold to a substantial extent for consumption by customers in cars." B.C.Z.R. §101.1. This is an antiquated definition enacted in 1967, when the "outlets" for dining were much different than those available today. Nonetheless, I do not believe the proposed Sonic qualifies as a "drive-in restaurant."

Mr. Behrle testified the store will have only 8 drive-in "stalls," which he believed would account for only about 10% of the Sonic's revenue. In my opinion, 10% does not constitute a "substantial extent" of the Sonic's customers or revenue. The Sonic (like McDonald's or any other

fast food restaurant) does more than 60% of its business at the drive-thru window, according to Mr. Behrle. I believe the Sonic is properly characterized as a “fast-food restaurant” which, pursuant to legislation enacted in 1993, is a business principally involved in the sale of “ready-to-consume food and beverages in disposable containers.” B.C.Z.R. §101.1. The same definition provides that such food and beverages are “consumed on the premises of the restaurant or within a motor vehicle on or off the premises.” This more accurately describes the proposed Sonic, which as a fast-food restaurant is permitted by right in the BL zone. As such the petition for special exception will be dismissed without prejudice.

Special Hearing

The petition for special hearing primarily concerns a “modified parking plan” as authorized by B.C.Z.R. §409.12. But for the most part the individual requests enumerated therein are not needed in this case. The first request concerns a reduction in the number of parking spaces required for a drive-in restaurant. As filed, the petition and site plan indicate 44 spaces would be provided, although Mr. Demos noted relocation of the dumpster (at the community’s request) resulted in the loss of 2 additional spaces. As noted above, I do not believe the proposed Sonic is a drive-in restaurant; as such, Petitioners do not need to provide 53 spaces. Instead, as a fast food restaurant, B.C.Z.R. §409 requires 16 spaces per 1,000 square ft. of building space. Here, the building is 2,625 square feet, so only 42 spaces is required. Since 42 spaces will be provided, this request is unnecessary.

The second request seeks a modification of the landscape strip requirements imposed by the Landscape Manual, as incorporated by B.C.Z.R. §409.8.A.1. The modifications would primarily reduce the buffers on the east and west side of the site, which adjoin other commercial uses. While a 6 ft. strip is sought in the rear yard (in lieu of 10 ft.), the order below will require

installation of a 10 ft. high fence, which should provide an adequate buffer for the adjoining homes.

The third request seeks approval for a 7 ft. parking space setback (in lieu of 10 ft.) from the right-of-way of a public street. These spaces would be adjacent to Joppa Road. I do not believe the reduced setback would have a negative impact upon the community, especially since Petitioners will be required to install a vegetative buffer in this area which will improve the appearance of the site and screen the parking lot from Joppa Road.

The fourth special hearing request seeks approval for business parking in a residential zone. As noted above, Bill 36-13 permits such parking “by right if there is an existing parking facility.” Petitioners submitted a site plan from a 1991 building addition project at Baynesville Electronics (Petitioners’ Ex. No. 1), which shows customer parking in the DR 5.5 portion of the site. As such, this request is unnecessary.

The final special hearing request seeks to permit loading and unloading of materials to take place during non-business hours. Mr. Behrle stressed that carriers prefer to make deliveries and empty the dumpsters when customers and vehicles are not present. But several members of the community described being awakened by trash haulers and delivery trucks servicing the fast food restaurants along Joppa Road. While Mr. Behrle indicated he could not control when Sonic made deliveries to the store, Mr. Smith (one of the former owners of Baynesville Electronics) testified he could specify when the trash hauler emptied the dumpster at the business. While I believe Petitioners should have some latitude, this is a quality of life issue for the adjacent residential community, and the order below will contain specific restrictions in this regard.

THEREFORE, IT IS ORDERED this 5th day of April, **2017**, 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 approve a modified parking plan pursuant to Section 409.12.B of the Baltimore County Zoning Regulations (“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 in lieu of the required 10 ft. strip and a 6 ft. strip between paved surfaces and lot/ lease lines adjacent to commercial uses or zones: (a) 0 ft. strip along the east side yard; (b) 0 ft. strip along the west side yard; (c) 7 ft. strip along the front yard; and (d) 6 ft. strip along the rear yard; (2) To permit a parking space in a surface parking facility for a non-residential use to be located 7 ft. from the right-of-way line of a public street in lieu of the required 10 ft. setback; and (3) To allow the loading and unloading of materials to take place during non-business hours (subject to the restrictions below), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception to approve a drive-in restaurant be and is hereby DISMISSED without prejudice.

IT IS FURTHER ORDERED that the Petition for Variance to permit a 0 ft. buffer and 0 ft. setback in lieu of the required 50 ft. buffer and 75 ft. setback in a Residential Transition Area (RTA), be and is hereby DISMISSED without prejudice.

The relief granted herein shall be subject to 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 install along the entire rear property boundary adjoining the residential properties on Yakona Road a fence no less than 10 ft. in height.

3. Petitioners must provide a “heavy Class A screen” along the rear boundary of the site (subject to the modification granted above), as determined in the sole discretion of the Baltimore County landscape architect.
4. Petitioners must provide a dumpster enclosure constructed of suitable materials, as determined in the sole discretion of the Baltimore County landscape architect.
5. Petitioners must to the extent possible preserve the existing oak trees at the rear of the property.
6. Petitioners must install at the exit onto Joppa Road a “No Left Turn” sign.
7. No business parking or commercial activity of any sort shall be permitted within the green shaded area at the rear of the site as shown on the site plan admitted as Petitioners’ Exhibit 3.
8. Deliveries and/or trash removal at the site shall take place only between the hours of 7 a.m.-12 a.m. (midnight).

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