

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(11317 York Road)	*	OFFICE OF
8 th Election District		
3 rd Council District	*	ADMINISTRATIVE HEARINGS
Stonehenge, LLC		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No. 2017-0213-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 Stonehenge, LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to permit 60 parking spaces in the RC-6 zone. In addition, a Petition for Variance seeks: (1) To permit a building setback of 0.75 ft. in lieu of the required 25 ft. from the future right-of-way; (2) To permit direct access to parking spaces off of a vehicular travel way; (3) To permit a parking landscape setback of 0 ft. in lieu of the required 10 ft. from the future right-of-way; (4) To permit direct access to parking spaces on a street where the average daily traffic exceeds 800 vehicles; and (5) To permit one (1) wall mounted enterprise sign on the front wall without a customer entrance in lieu of the permitted zero (0) wall mounted signs. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Greg Reed and Dana Valenti (on behalf of the owner) and professional engineer Mike Gesell appeared in support of the requests. Jennifer R. Busse, Esq. 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. Substantive Zoning Advisory Committee (ZAC)

comments were received from the Department of Planning (DOP) and the Department of Environmental Protection and Sustainability (DEPS). Neither agency opposed the requests.

The subject property is located at the intersection of York and Shawan Roads in Hunt Valley. The site is approximately 11.49 acres in size and is split-zoned BR and RC-6. The site is improved with a strip shopping center (i.e., Shawan Plaza Shopping Center) containing a Giant grocery store, restaurants and several other retail stores. Petitioner proposes to construct a two-story building which would adjoin the Giant food store along the northern boundary of the site. The first floor would contain 5,887 sq. ft. and the second floor would be 9,667 sq. ft. The building would serve as the regional headquarters for Kimco Realty, and would have approximately 60 employees.

This is somewhat of an unusual case, in that Petitioner seeks a building setback variance (as well as other variance requests) from a “future right-of-way.” The 90 ft. right-of-way in question is shown on an April, 1988 CRG plan from when the site was first developed. But the right-of-way has never been dedicated to the County, so as a technical matter one could argue a building setback variance is not required since the proposed building would in fact be located more than 25 ft. from the existing “property line.” B.C.Z.R. §238.1. Even so, Petitioner acknowledges the right-of-way (which could be used for an extension of Shawan Road) is shown on both the CRG plan and the Hunt Valley/Timonium Master Plan (which is incorporated into Master Plan 2020), so it believed the more prudent course was to include the setback variance request.

The original zoning petition did not include a request concerning the number of off-street parking spaces provided for the overall shopping center. Petitioner explained it was granted a variance in 2005 permitting 406 spaces in lieu of the required 523. And in 2015 it sought and obtained a declaration that the relief granted in 2005 was applicable to future construction and projects at the property. This is in accord with the general rule in zoning cases. 3 Rathkopf’s The

Law of Zoning and Planning § 58:23 (4th ed.) (generally, a grant of a zoning variance runs with the land). Petitioner explained that the 2005 variance permitted a reduction of 117 spaces, and that in this case the deficit (i.e., 574 spaces required—463 provided) would be less than the 117 shortfall approved in 2005.

While that may be the case, Petitioner is proposing to construct a new building at the site which increases the number of parking spaces required beyond the number at issue in the 2005 case (i.e., 523). As such, as discussed at the hearing, I believe it is preferable to include an additional variance request here to permit 463 spaces in lieu of the required 574. This will more accurately reflect the current state of affairs and will assist others viewing the zoning and development history of the site. The Petition was so amended following the hearing at the suggestion of the undersigned.

SPECIAL HEARING

The special hearing request seeks approval for business parking in a residential zone. The parking spaces in question would be behind the shopping center and located in the RC-6 zone, which necessitates zoning relief. Petitioner originally sought approval for 60 off-street parking spaces, although following discussions with County review agencies the Petition was amended and requests approval for 36 spaces.

Mr. Gesell opined (via proffer) Petitioner satisfied the requirements of B.C.Z.R. §409.8, as well as the special exception standards which are incorporated into the aforementioned regulation. The undersigned reviewed with Petitioner the restrictions contained in B.C.Z.R. §409.8.B.2, and I believe the parking arrangement as proposed will satisfy these conditions. As such, the petition for special hearing will 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. In addition, the property was found to be unique in several prior zoning cases. *See, e.g.*, Case Nos. 2016-0178-SPHA & 2011-0295-A. Petitioner would experience practical difficulty if the regulations were strictly interpreted because it would be unable to construct the proposed building. Finally, I do not believe granting the variance request would have a detrimental impact upon the community.

THEREFORE, IT IS ORDERED this 14th 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) to permit 36 parking spaces in the RC 6 zone, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the petition for variance as follows: (1) To permit a building setback of 0.75 ft. in lieu of the required 25 ft. from the future right-of-way; (2) To permit direct access to parking spaces off of a vehicular travel way; (3) To permit a parking landscape setback of 0 ft. in lieu of the required 10 ft. from the future right-of-way; (4) To permit direct access to parking spaces on a street where the average daily traffic exceeds 800 vehicles; (5) To permit one (1) wall mounted enterprise sign on the front wall without a customer entrance in lieu of the permitted zero (0) wall mounted signs; and (6) to permit 463 parking spaces in lieu of the

required 574 (489 spaces will be provided, but the 26 spaces shown in the future right-of-way shall not be used for purposes of this calculation), 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. Petitioner shall provide landscaping at the site as determined in the sole discretion of the Baltimore County landscape architect.
3. Petitioner must comply with the ZAC comment submitted by DEPS, a copy of which is attached.
4. Should Baltimore County decide to extend Shawan Road and acquire the 90 ft. right-of-way shown on the site plan, Petitioner would be responsible for removing at its own expense any parking spaces, landscaping or other improvements constructed in that right-of-way.

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