

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b> *	BEFORE THE
<b>AND VARIANCE</b>	
(4703-4709 Wilkens Avenue) *	OFFICE OF
13 <sup>th</sup> Election District	
1 <sup>st</sup> Council District *	ADMINISTRATIVE HEARINGS
Westland Gardens Co., <i>et al.</i>	
<i>Legal Owners</i> *	FOR BALTIMORE COUNTY
J. C. Bar Properties, Inc. <i>Contract Purchaser</i>	
Petitioners *	<b>Case No. 2017-0218-SPHA</b>

\* \* \* \* \*

**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 Westland Gardens Co., *et al.*, legal owners and J.C. Bar Properties, Inc., contract purchaser (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R) to approve 2 stacking spaces for the drive through facility for a drug store (not including the space next to the transaction window), pursuant to B.C.Z.R. §409.10.A. In addition, a Petition for Variance seeks to allow 58 off street parking spaces in lieu of the required 74 parking spaces. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Andrew Stine, Carl Wilson and Joe Eisenhaner appeared in support of the requests. David H. Karceski, Esq. represented the contract purchaser. 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 Bureau of Development Plans Review (DPR) and the Department of Environmental Protection and Sustainability (DEPS). Neither agency opposed the requests.

The subject property is approximately 1.97 acres in size and zoned BL. The property (comprised of 22 individual lots) is improved with several dwellings which will be razed. The property

was zoned for residential use until 2016, at which point it was rezoned to BL during the comprehensive zoning process. Petitioners propose to construct a CVS pharmacy at the site. A pharmacy is permitted by right in the zone, although Petitioners require variance and special hearing relief to construct the proposed improvements.

### SPECIAL HEARING

The special hearing seeks to approve 2 stacking spaces for a drive-through pharmacy window. The Regulations are silent concerning the number of stacking spaces required for a drive-through pharmacy, which is a relatively recent phenomenon. CVS representatives indicated 2 spaces would be sufficient, and a similar request was approved in a previous zoning case involving a CVS pharmacy on Joppa Road. See Case No. 2016-0110-SPHA. As such, the special hearing request will be granted.

### 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).

Petitioners have met this test. The property is irregularly shaped and there is a significant (i.e., 14 ft.) elevation change across the site. As such the property is unique. Petitioners would experience practical difficulty if the regulations were strictly interpreted because they would be unable to operate the new business at the location. Finally, as demonstrated by the lack of County and/or community opposition, I do not believe granting the requests would have a detrimental impact upon the community.

THEREFORE, IT IS ORDERED this 26<sup>th</sup> 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 approve 2 stacking spaces for the drive-through facility for a drug store (not including the space next to the transaction window), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the petition for variance to allow 58 off street parking spaces in lieu of the required 74 parking spaces, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon 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. Prior to issuance of permits Petitioners must submit for approval by Baltimore County landscape and lighting plans for the site.
3. Prior to issuance of permits Petitioners must comply with the forest conservation provisions in the Baltimore County Code.
4. Prior to issuance of permits Petitioners must obtain an entrance permit from the State Highway Administration.

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