

IN RE: PETITIONS FOR SPECIAL HEARING, *	BEFORE THE
SPECIAL EXCEPTION & VARIANCE	OFFICE OF
(10926 York Road) *	
8 th Election District	ADMINISTRATIVE HEARINGS
3 rd Council District *	
Biejan Arvon & Ali Mehr	FOR BALTIMORE COUNTY
<i>Legal Owners</i> *	
Petitioners *	Case No. 2017-0289-SPHXA

* * * * *

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 Biejan Arvon and Ali Mehr, legal owners (“Petitioners”).

The Petition for Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R) to amend the previously approved site plan for Case No. 06-451-SPHXA. A Petition for Variance seeks: (1) to permit a front yard setback of 14 ft. in lieu of the required 50 ft. for a non-residential building; (2) to permit a side yard setback of 7.5 ft. in lieu of the required 30 ft. for a non-residential building; and (3) to permit a 12 ft. travel way in lieu of the required 20 ft. travel way. Finally, a Petition for Special Exception seeks to permit a service garage in a ML-IM zone.

Appearing at the public hearing in support of the requests was professional engineer John Motsco and owners Ali Mehr & Biejan Arvon. Marc Seldin Rosen, Esq. represented Petitioners. Eric Rockel attended the hearing and expressed concern with the proximity of the flood plain. 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). These comments will

be discussed below.

The subject property is approximately 0.454 acres in size and is zoned ML-IM. The property is on York Road in the Hunt Valley area, and is adjacent to Beaver Dam Run. A service garage has operated at the site for many years. Petitioners propose to raze the existing building (which as noted by the DOP is in poor condition) and construct on the lot a new building for the service garage along with the necessary off-street parking. Strictly speaking, Petitioners do not require zoning relief, since a special exception for a service garage and setback variances (more significant than those sought herein) were granted in Case No. 2006-451-SPHXA. Even so, given the scope of the project the zoning office required a public hearing in the case.

Special Hearing

The special hearing request is in the nature of a housekeeping matter, in that it simply seeks to amend the plan approved in the 2006 case cited above to reflect proposed conditions. This will enable the County to have an updated and accurate site plan for this project. As such the petition 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 has irregular dimensions and the available building envelope is constrained by environmental features. As such it is unique. If the Regulations were

strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to construct the proposed service garage. Finally, I find that the variance 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.

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 *Attar v. DMS Tollgate, LLC*, ___ Md. ___, 152 A.3d 765 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized 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.

In this case Mr. Motsco opined Petitioners satisfied the B.C.Z.R. §502.1 requirements, and no evidence was presented to rebut this prima facie case. In addition, a service garage has operated at the site for many years and there is no indication the use has had a detrimental impact upon the community. As such the petition for special exception will be granted.

Mr. Rockel indicated he was surprised the Department of Environmental Protection and Sustainability (DEPS) did not submit a ZAC comment. Mr. Motsco explained however that the owners began this process by seeking and obtaining from DEPS an environmental variance permitting construction within the forest buffer which, as he notes, bisects the site and would (if strictly applied) render the property useless.

ZAC Comments

The DOP did not oppose the requests, but proposed certain conditions which it believed were appropriate if the petitions were granted. I concur, and will include those conditions in the order below.

The Bureau of DPR requested Petitioners remove from the plan the parking space which would intrude slightly into the floodplain, and that condition will be included in the order below. That agency also suggested Petitioners needed a variance (which it would not support) to have off-street parking on surfaces which are not durable and dustless. However, Mr. Motsco confirmed all parking and vehicle storage areas would be paved.

Finally, the Bureau of DPR also indicated Petitioners required a variance (which it also would not support) for parking within 10 feet of the York Road right-of-way. Based on my review of the plan, I respectfully disagree with that agency's comment. The parking space in question will be designated as a handicapped space, and is in fact more than 10 feet from York Road. It is only the ingress and egress area specifically required for such spaces that is within the required setback. The applicable Regulation states no "parking space" shall be closer than 10 feet to a public street, and in my opinion Petitioners have satisfied this requirement. B.C.Z.R. §§409.8.A.4 & 409.9.

THEREFORE, IT IS ORDERED this 30th day of June, **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 amend the previously approved site plan for Case No. 06-451-SPHXA, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception to permit a service garage in a ML-IM zone, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit a front yard

setback of 14 ft. in lieu of the required 50 ft. for a non-residential building; (2) to permit a side yard setback of 7.5 ft. in lieu of the required 30 ft. for a non-residential building; and (3) to permit a 12 ft. travel way in lieu of the required 20 ft. travel way, be and is hereby GRANTED.

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 comply with the ZAC comment received from the DOP, a copy of which is attached hereto and made a part hereof.
3. Petitioners shall remove from the plan the proposed parking space farthest from York Road, and submit to the Office of Administrative Hearings within 15 days of the date hereof a redlined site plan reflecting this change.

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