

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(2507 North Point Road))	*	OFFICE OF
12 th Election District		
7 th Council District	*	ADMINISTRATIVE HEARINGS
Prosperity Investment Enterprise, LLC,	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
Petitioner	*	Case No. 2018-0015-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 Prosperity Investment Enterprise, LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows: (1) To approve a modified parking plan as shown on the attached site plan: (a) To modify certain parking facility access requirements, as necessary; (b) To permit 19 spaces in lieu of the required 20 spaces; (c) To allow certain modifications to landscape manual standards, if deemed to be necessary; (d) To allow certain modifications to allow parking spaces to be located 0 ft. from public street right-of-way lines in lieu of the required 10 ft.; (e) To allow a modified parking lot which does not provide a separate area for loading/unloading; (2) To permit business parking within a residential zone, as shown on the attached site plan; and (3) To approve a modified RTA to allow a minimum 5.9 ft. RTA setback and a minimum 5.9 ft. RTA buffer in lieu of the 75 ft. setback and 50 ft. buffer required for parking lots. A Petition for Variance seeks: (1) if required from an internal lot line where both lots are under common ownership, to permit a rear yard of 0 ft. in lieu of the 20 ft. deep rear lot required; and (2) If necessary, to permit amenity open space of

0 sq. ft. in lieu of the 1,525 sq. ft. required. A site plan was marked and accepted into evidence as Petitioner's Exhibit 1.

Surveyor Ken Wells and Reza Tafrihi, DDS, appeared in support of the requests. Lawrence E. Schmidt, 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. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP).

SPECIAL HEARING

The petition for special hearing seeks three categories of relief: (1) a modified parking plan; (2) business parking in a residential zone; and (3) modification of RTA requirements.

The subject property is approximately 15,000 sq. ft. in size and is comprised of two lots. Lot 1 is 7,609 sq. ft. and zoned BL-CCC. This lot is improved with a commercial building which for over 50 years has been operated as a dental office. Petitioner proposes to expand the size of the existing building to serve additional clients, many of whom are low-income patients. Lot 2 is 7,000 sq. ft. and zoned DR 5.5. This lot is improved with a dilapidated dwelling, which Petitioner proposes to raze. Petitioner proposes to construct a parking lot on Lot 2 to serve the enlarged dental practice.

The modified parking plan is required because the site has been in its current configuration for over 50 years, and many of the current parking setback and landscape requirements contained in B.C.Z.R. §409 cannot be satisfied. The second and third special hearing requests are required in order for Petitioner to construct additional parking on Lot 2, which is recently purchased. Based on the testimony of Mr. Wells and Dr. Tafrihi, I believe Petitioner has satisfied the requirements set forth in B.C.Z.R. §409-12, and the modified parking plan will be approved.

The proposed parking lot will provide a valuable amenity to this underserved community, and will in fact be more aesthetically pleasing than the existing abandoned home, which is both an eyesore and public health hazard. The immediate area has many commercial uses and significant traffic. As such, I do not believe the business parking on this small sliver of residential land will be injurious to the community. Likewise, the reductions in the RTA setbacks are required given the long-existing site conditions and the lack of any additional land which Petitioner could acquire to provide an additional buffer. Even so, Petitioner proposes to install a stockade fence around the parking lot, which will screen the dwelling to the west of the parking area.

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).

This property has an irregular shape, and Petitioner must contend with site conditions which have existed for over 50 years. As such the property is unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because it would be unable to expand the dental office. Finally, I find that the variances 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. This is demonstrated by the lack of community and/or Baltimore County opposition.

THEREFORE, IT IS ORDERED this 29th day of **September, 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.”) as follows: (1) To approve a modified parking plan as shown on the attached site plan: (a) To modify certain parking facility access requirements, as necessary; (b) To permit 19 spaces in lieu of the required 20 spaces; (c) To allow certain modifications to landscape manual standards, if deemed to be necessary; (d) To allow certain modifications to allow parking spaces to be located 0 ft. from public street right-of-way lines in lieu of the required 10 ft.; (e) To allow a modified parking lot which does not provide a separate area for loading/unloading; (2) To permit business parking within a residential zone, as shown on the attached site plan; and (3) To approve a modified RTA to allow a minimum 5.9 ft. RTA setback and a minimum 5.9 ft. RTA buffer in lieu of the 75 ft. setback and 50 ft. buffer required for parking lots, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to permit as follows: (1) if required from an internal lot line where both lots are under common ownership, to permit a rear yard of 0 ft. in lieu of the 20 ft. deep rear lot required; and (2) If necessary, to permit amenity open space of 0 sq. ft. in lieu of the 1,525 sq. ft. required, be and is hereby GRANTED.

The relief granted herein shall be subject to 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 must comply with ZAC comment of DOP, a copy of which is attached hereto.

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