

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(6100, 6102 & 6104 Old Frederick Road)	*	OFFICE OF
15 <sup>th</sup> Election District		
7 <sup>th</sup> Council District	*	ADMINISTRATIVE HEARINGS
Avadhut Donuts, LLC,	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
Petitioner	*	<b>Case No. 2018-0023-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 Avadhut Donuts, 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 site plan: (a) To permit 33 spaces in lieu of the required 53 spaces; (b) To allow certain modifications to landscape manual standards, if determined to be necessary; (c) To allow certain modification to allow parking spaces from public street right-of-way lines of 8 ft. in lieu of the required 10 ft.; (d) To permit 4 stacking spaces behind the menu board in lieu of the required 5 spaces; (e) To permit the drive-thru lane to cross principal pedestrian access to the facility; and (f) To allow a modified parking lot which does not provide a separate area for loading/unloading. A Petition for Variance seeks to permit two directional signs of 11.08 ft. height in lieu of the permitted 6 ft. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Mark Keeley, John C. Povalac, P.E., and David Roberson appeared in support of the requests. Lawrence E. Schmidt, Esq. represented the Petitioner. Three neighbors attended the hearing and expressed concern with congested traffic conditions in the area. 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”). That agency opposed the requests.

### SPECIAL HEARING

The petition for special hearing seeks approval of a modified parking plan for the site. Most of the proposed modifications are quite modest (i.e., 4 stacking spaces in lieu of 5, parking spaces within 8 ft. of public street in lieu of 10 ft.), and Petitioner will provide landscaping, fencing and an earthen berm along the east side of the site which will mitigate to some extent the potential off-site impacts. Petitioner satisfies each of the requirements set forth in B.C.Z.R. § 409.12, and the special hearing request will be granted.

### VARIANCES

As with the special hearing requests, the variance requests are also modest, and concern only the height of two directional signs at the site. 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 irregular dimensions and is therefore unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because it would be unable to install the necessary signs to direct patrons to the appropriate areas of the site. 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.

As noted earlier, the DOP opposed the requests, believing the proposed use would have a detrimental impact upon the adjacent dwellings. This is always a concern along busy commercial corridors like York Road or Baltimore National Pike. In such locations there are numerous commercial uses adjacent to dwellings, and there certainly is the potential for noise and traffic which accompany most commercial or retail operations.

But the Baltimore County Council rezoned this site in 2008, and a Dunkin Donuts (or numerous other commercial uses) are permitted by right. The DOP's concerns are valid ones, but they are presumably the same ones considered by the Baltimore County Council before it rezoned the site. In addition, Petitioner reduced by 35% the size of the commercial building as originally proposed, and will also upgrade and enhance the building façade facing Old Frederick Road, which represents a significant investment.

I am also mindful of the concerns expressed by the neighbors, which primarily focused on the congested traffic conditions in the area. Of course, this is becoming a fact of modern life: our roadways and infrastructure are overcrowded and overburdened. That, of course, is not the Petitioner's problem to solve. Even so, I believe the site is well planned and the ingress and egress should facilitate a high volume of customers without creating significant delays. Mark Keeley, a traffic engineer accepted as an expert, opined the use would not cause congestion in area roadways. He also noted his firm would prepare a traffic study for the State Highway Administration, which controls Rt. 40. That agency will no doubt investigate whether any additional improvements are required in this area to improve the safety and efficiency of the roadways.

THEREFORE, IT IS ORDERED this **19<sup>th</sup>** 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 site plan: (a) To permit 33 spaces in lieu of the required 53 spaces; (b) To allow certain modifications to landscape manual standards, if determined to be necessary; (c) To allow certain modification to allow parking spaces from public street right-of-way lines of 8 ft. in lieu of the required 10 ft.; (d) To permit 4 stacking spaces behind the menu board in lieu of the required 5 spaces; (e) To permit the drive-thru lane to cross principal pedestrian access to the facility; and (f) To allow a modified parking lot which does not provide a separate area for loading/unloading, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to permit two directional signs of 11.08 ft. height in lieu of the permitted 6 ft., 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 submit for approval by Baltimore County a landscape and lighting plan for the site.
3. Deliveries to the site are permitted only during hours the business is closed to the public, and all deliveries must take place on the north side of the site adjacent to Route 40.
4. The dumpster enclosure must be approved by the Baltimore County landscape architect.
5. Building elevations shall be submitted to the DOP at the time of building permit application.
6. No signage, whether freestanding or wall-mounted, shall be permitted along the Old Frederick Road side of the site.
7. All roof top mechanical equipment shall be screened, to the extent practicable, so that it is not visible from any public street or residential property.

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:dlw