

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(9800 Reisterstown Road)		
3 rd Election District	*	OF ADMINISTRATIVE
2 nd Council District		
9800 Reisterstown Road, LLLP	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2018-0033-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by 9800 Reisterstown Road, LLLP, the legal owner of the subject property (“Petitioner”). The Petition seeks variance relief from §§ 409.6.A.2, 235.1 and 303.2 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows: (1) to allow a total of 99 off-street parking spaces in lieu of the required 193 parking spaces; and (2) to permit a 24 ft. front yard setback for a commercial building in lieu of the required 91.5 ft. A site plan was marked as Petitioner’s Exhibit 1.

Landscape architect Matthew Bishop, professional engineer Joseph Caloggero, Michael Stoltz and Jim Flannery appeared in support of the petition. David H. Karceski, Esq. and Neill Thupari, Esq. represented the Petitioner. The owner of a neighboring business (Marc Cohen) represented by Jennifer Busse, Esquire attended the hearing to express concern regarding traffic conditions at the site. The Petition was advertised and posted as required by the B.C.Z.R. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (DOP).

The site is approximately 3.09 acres in size and zoned BM. The site is improved with a large commercial building which for many years was owned and operated by the American Express credit card company. Petitioner purchased the property in 2014, and “Savers” (a thrift store) operates a retail store at the site. Petitioner proposes to construct a Burger King fast food restaurant at the front of the site bordering Reisterstown Road.

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).

The large commercial parcel has irregular boundaries and is therefore unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because it would be unable to construct the proposed restaurant. 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.

Though the DOP did not oppose the requests, its ZAC comment identified certain concerns regarding the proposal. In response to the first item noted in the ZAC comment, Petitioner advised it is not seeking to have a second freestanding sign at the premises, but would seek to have a panel for Burger King added to the existing “Savers” sign on Reisterstown Road. In response to the remaining issues raised by the DOP, the order below will include conditions regarding temporary signage and the necessity for an additional public hearing if Petitioner later decides to utilize the “vacant space” identified on the plan.

Mr. Cohen operates an automobile dealership at the adjacent property, 9804 Reisterstown Road. He indicated traffic in the area is frequently heavy and congested, and he also noted motorists use his property as a turn-around when accessing the Savers store. Counsel for both parties agreed this is a development issue that should be handled by the DRC rather than a zoning issue for the ALJ. Both parties agreed to certain conditions to address this concern, and those will be included in the order below.

THEREFORE, IT IS ORDERED, this 27th day of **September, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from §§ 409.6.A.2, 235.1 and 303.2 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows: (1) to allow a total of 99 off-street parking spaces in lieu of the required 193 parking spaces; and (2) to permit a 24 ft. front yard setback for a commercial building in lieu of the required 91.5 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. Only “commercial special event” temporary signs (as described in B.C.Z.R. §450.4, Class 17 on Table of Sign Regulations) shall be permitted at the site. Such signs shall be subject to the limitations set forth at B.C.Z.R. §450.7.E.2.
3. If the “vacant space” (9,287 sq. ft.) shown on the plan is occupied by a tenant or used in any fashion, a public hearing (variance and/or special hearing) will be required to consider the adequacy of the parking in light of the new use/tenant.
4. A second freestanding sign shall not be permitted at the site.
5. Petitioner confirmed a development plan (a copy of which should be provided to Marc Cohen and/or his counsel) would be prepared and submitted to Baltimore County, and that it would seek an exemption under B.C.C. §32-4-106(b).

6. Petitioner shall provide to Marc Cohen and/or his counsel copies of any traffic studies and/or correspondence to/from the State Highway Administration concerning this project.

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