

<b>IN RE: PETITIONS FOR SPECIAL HEARING,</b>	*	BEFORE THE
<b>SPECIAL EXCEPTION &amp; VARIANCE</b>		
(6328 Baltimore National Pike)	*	OFFICE OF
1 <sup>st</sup> Election District		
1 <sup>st</sup> Council District	*	ADMINISTRATIVE HEARINGS
Mahe Properties, LLC		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Mission Maryland, LLC		
<i>Lessee</i>	*	<b>Case No. 2018-0048-SPHXA</b>
Petitioners		

\* \* \* \* \*

**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 Mahe Properties, LLC, legal owner, and Mission Maryland, LLC, lessee (“Petitioners”).

The Petition for 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, modifying the following B.C.Z.R. §409 provisions: (a) to permit 23 spaces for certain mixed office, retail and service garage uses proposed for the subject property; (b) to allow certain modifications to landscape manual standards, if deemed to be necessary; and (c) to allow a modified parking plan which does not separately identify a designated area for loading/unloading; and (2) If necessary, to confirm that the existing side and rear yard setbacks are permitted.

In addition, a Petition for Variance seeks: (1) to approve an existing awning enterprise sign with two (2) copy lines in lieu of the one (1) copy line permitted; (2) along the wall which faces Baltimore National Pike, to permit two (2) existing wall-mounted enterprise signs on the wall of a multi-tenant building without a separate exterior customer entrance, in lieu of the one (1) wall-

mounted enterprise sign permitted with a separate exterior customer entrance; and (3) In the alternative to Special Hearing request number 2, if determined to be necessary, to permit a side yard setback of 29.8 ft. and a rear yard setback of 28.7 ft., in lieu of the 30 ft. required.

Finally, a Petition for Special Exception was filed to approve the use and development of the subject property as a medical cannabis dispensary.

Appearing at the public hearing in support of the requests was Undrea Wright, Valerie Mae Wright, Scott Shank, Don Schaefer, Ken Wells and Honey Book. Lawrence E. Schmidt, Esq., represented the Petitioners. 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 submitted by the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). Neither agency opposed the requests.

The subject property is approximately 0.4923 acres in size and is zoned BR-AS. The property is improved with a two-story commercial building constructed in 1985. At present Caton Radio and a lawyer's office occupy the building. Petitioners propose to lease approximately 3,500 sq. ft. of the building on the first floor to operate a medical cannabis dispensary. Since the property is within the Baltimore National Pike commercial revitalization district (Petitioners' Exhibit 5) a special exception is required for the dispensary.

The petition for special hearing concerns off-street parking at the site, and will be discussed below. There is a second special hearing request related to the side and rear yard setbacks for the commercial building. Under the Regulations a 30 ft. setback is required, while the existing setbacks are approximately 29 ft. This is a condition which has existed since the building was constructed over 30 years ago, and the relief requested is *de minimis*. Finally, the variances concern existing

signage and the plan was revised (as required by the office of zoning review) to reflect that the roof-mounted Caton Radio sign will be removed.

### **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).

The property has an irregular shape and is therefore unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to retain the existing signage which has been in place for many years without complaint. 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 absence of community and/or County opposition. In addition, the variances concern existing signage at the site which is not excessive and does not create visual clutter.

Petitioners also presented an elevation of a proposed sign for the dispensary, which was admitted as Exhibit No. 10. The proposed sign does not contain any offensive or obtrusive text or pictures, and resembles the type of signage which would be found at a medical clinic or office.

### **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*, 451 Md. 272, (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.

Mr. Wells opined (via proffer) Petitioners satisfied the requirements of B.C.Z.R. §502.1, and I concur. He noted the proposed dispensary will be located in a commercial zone along a busy thoroughfare, and that the school nearest the site is over one mile away. Mr. Wells also testified there are no dwellings within the immediate vicinity of the proposed dispensary. In light of these facts, and aided by the presumption under Maryland law, I believe the petition for special exception should be granted.

The Office of People's Counsel submitted a letter dated October 6, 2017, a copy of which is in the case file. Mr. Zimmerman argued therein, and Petitioners' counsel did not disagree, that the dispensary use should be shown to further the goals of the revitalization district. The DOP's ZAC comment (which referenced Master Plan 2020) noted one of the goals of such districts is to "strengthen the existing base of small businesses and attract new and different uses." I believe the proposal here advances that goal, and as evidence of that fact Petitioners submitted letters of support from the adjacent liquor store, the Bob Evans Restaurant and Antwerpen automotive group, among others. Petitioners' Exhibit 9A-G.

### **Special Hearing**

The special hearing request relates to three aspects of the parking regulations. First, Petitioners will provide 25 spaces, while as many as 33 may be required. Counsel noted the Regulations provide for a 5% reduction in the number of spaces required when the site is within 1,000 feet of an MTA bus stop (which this site is, as shown on Ex. No. 7) and a 10% reduction for properties in a commercial revitalization district. B.C.Z.R. §409.6.B.1. As such, I believe the

required number of spaces would be 28 when the original total of 33 is reduced by 15% as permitted by §409.6. The requested modification in the number of spaces is modest, and I do not believe granting the request will have a detrimental impact upon neighboring properties.

The other parking modifications sought via special hearing relate to the lack of a designated loading zone and reduced landscaping requirements. As to the former, the dispensary operation will not have large trucks making deliveries (as would a grocery store or fast food restaurant, for example) and thus I do not believe a designated loading/unloading zone is required for this use. As for the latter request, Mr. Wells explained most of the site is covered by impervious surface, and it would be difficult and extremely expensive to comply with the Landscape Manual in all respects. Mr. Wells prepared a schematic landscape plan (Ex. 1B) showing several areas in which landscaping could be provided to soften the appearance of the site. I believe that would suffice, but I will leave the resolution of that issue to the County's landscape architect who has the expertise to determine what vegetation or screening would work best for this site.

THEREFORE, IT IS ORDERED this 26<sup>th</sup> day of **October, 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 parking plan (as shown on the site plan admitted as Exhibit 1A) modifying the following B.C.Z.R. §409 provisions: (a) to permit 23 spaces for certain mixed office, retail and service garage uses proposed for the subject property; (b) to allow certain modifications to landscape manual standards, if deemed to be necessary; and (c) to allow a modified parking plan which does not separately identify a designated area for loading/unloading; and (2) To confirm that the existing side and rear yard setbacks are permitted, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception to approve the use

and development of the subject property as a medical cannabis dispensary, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking: (1) to approve an existing awning enterprise sign with two (2) copy lines in lieu of the one (1) copy line permitted; and (2) along the wall which faces Baltimore National Pike, to permit two (2) existing wall mounted enterprise signs on the wall of a multi-tenant building without a separate exterior customer entrance, in lieu of the one (1) wall-mounted enterprise sign permitted with a separate exterior customer entrance, 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 submitted by the DOP, a copy of which is attached hereto and incorporated herein.
3. Petitioners must remove within 45 days of the date hereof the rooftop "Caton Radio" sign on the subject premises.
4. Petitioners must submit for approval by the DOP prior to issuance of permits elevation drawings of any signs proposed for the dispensary.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:slh