

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(11706 Reisterstown Road)	*	OFFICE OF
4 th Election District		
4 th Council District	*	ADMINISTRATIVE HEARINGS
Turnpike Associates, LLLP	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
Petitioner	*	Case No. 2018-0067-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 Turnpike Associates, LLLP, legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve an amendment to the site plan approved in Case No. 2005-0310-SPHX. A Petition for Variance seeks: (1) to allow parking in a surface parking facility for a nonresidential use to be located as close as 5 ft. from the right-of-way line for Cherry Valley Road and as close as 6 ft. from the right-of-way line for Reisterstown Road in lieu of the required 10 ft. for a public street; and (2) to allow a side yard setback of 3 ft. from the building line and 1 ft. from the stairs in lieu of the required 10 ft. for a lot that abuts another lot in a residence zone. A redlined site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Devin Gerhart, Colby Stiles, Michael Albo, and Matthew A. Bishop, landscape architect with Morris & Ritchie Associates, Inc., appeared in support of the requests. David H. Karceski, Esq. and A. Neill Thupari, Esq. with Venable, LLP represented the Petitioner. George Harman, with the Reisterstown-Owings Mills-Glyndon Coordinating Council (ROG), attended the hearing to obtain additional information regarding the requests. The Petition was advertised and

posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR).

SPECIAL HEARING

The subject property is approximately 7.99 acres in size and split- zoned BL, BL-AS. The property is improved with a strip shopping center, grocery store (Aldi) and Office Depot. Petitioner proposes to enlarge the grocery store, which drives the need for zoning relief. The Petition for special hearing is essentially a housekeeping measure which would simply amend the plan submitted in connection with Case No. 2005-0310-SPHX to reflect the improvements proposed herein.

VARIANCE

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).

Mr. Bishop testified via proffer the site has an irregular shape, which I believe renders it unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because it would be unable to construct the proposed improvements. 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. This is demonstrated by the lack of community and/or Baltimore County opposition.

There was some confusion concerning the variance request pertaining to parking spaces, as evidenced by DPR's ZAC comment indicating the 10 ft. setback along Cherry Valley Road "should be maintained." As counsel noted, Petitioner does not propose any changes to the parking at the center. Instead, the variance request would "legitimize" the long-existing setbacks, which do not comply with current regulations.

The final issue concerns the ZAC comment submitted by the DOP. That agency was concerned with the adequacy of the loading dock, and whether traffic could be impeded. Mr. Bishop stated that in response to this comment he revised slightly the site plan and noted a 20 ft. wide aisle would be provided, which satisfies the B.C.Z.R. The DOP also requested opaque fencing be installed at the tract boundary to screen the adjacent tot lot. Mr. Bishop indicated there was sufficient existing vegetation to screen the park and he believed the fence was not necessary. I tend to agree, but will leave the issue for the County's landscape architect to decide.

THEREFORE, IT IS ORDERED this **16th** 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.") to approve an amendment to the site plan approved in Case No. 2005-0310-SPHX, be and is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Petition for Variance seeking: (1) to allow parking in a surface parking facility for a nonresidential use to be located as close as 5 ft. from the right-of-way line for Cherry Valley Road and as close as 6 ft. from the right-of-way line for Reisterstown Road in lieu of the required 10 ft. for a public street; and (2) to allow a side yard setback of 3 ft. from the building line and 1 ft. from the stairs in lieu of the required 10 ft. for a lot that abuts another lot in a residence zone, 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 provide landscaping and screening at the site as determined in the sole discretion of the Baltimore County landscape architect.

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