

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(1835 Frederick Road)	*	OFFICE OF
1 st Election District		
1 st Council District	*	ADMINISTRATIVE HEARINGS
Candlelight Realty, LLC	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
Petitioner	*	Case No. 2018-0143-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 Candlelight Realty, 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 amend the previously approved site plan and Order in Case No. 2014-0059-SPHXA to approve the construction of a 4,875 sq. ft. addition containing two viewing rooms; (2) to approve the reconfiguration of the existing parking lot and the construction of a new parking area to support the new addition; and (3) to allow three residential dwellings to be constructed at the rear of the subject property, outside of the previously approved special exception area for the funeral home.

A petition for variance seeks to allow a row of parking spaces as close as 4 ft. from a street right-of-way in lieu of the required 10 ft. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Craig and Deborah Witzke and Rick Richardson, professional engineer, appeared in support of the requests. Timothy M. Kotroco, Esq. represented the Petitioner. Several citizens 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), the Bureau of Development Plans Review (DPR), Department of Environmental Protection and Sustainability (DEPS) and the State Highway Administration (SHA). None of the reviewing agencies opposed the requests

SPECIAL HEARING

The petition for special hearing seeks to amend the site plan submitted in a 2014 special exception case which approved a funeral home at the property. The amendments would reflect that the funeral home is being enlarged with a proposed addition, and the parking area(s) serving that use are being reconfigured and enlarged. Technically speaking an owner is entitled to enlarge a building in which a special exception use is conducted, provided he meets all height and setback requirements for the zone. Petitioner is not requesting any variances in connection with the proposed addition, and thus this aspect of the special hearing petition is essentially a “housekeeping” measure to update the plan approved in the 2014 zoning case.

The other aspect of the special hearing concerns the potential for three single-family dwellings which would be constructed at the rear of the 6.6 acre parcel. Mr. Witzke stated one lot would be used to construct a home for him and his wife. Counsel noted funeral home operators frequently reside on site, and Mr. Witzke stated it would be convenient (and more economical) for him to reside on the premises. I concur, and believe Mr. Witzke’s home would be an accessory structure/use to the funeral home operation.

But I do not believe the same can be said for the two other proposed lots, on which his daughters might potentially construct dwellings. Mr. Richardson testified there is sufficient density to construct three or more dwellings in the area at the rear of the site, and as requested by the DOP he showed on his plan “division lines” which reflect each lot would satisfy the area

requirement for the DR 5.5 zone. While Petitioner may well have the right to construct three dwellings at the rear of the site, I do not believe the request (“to allow three residential dwellings to be constructed on the rear of the subject property”) is an appropriate special hearing request in the context of this case, which primarily concerns the expansion of a funeral home special exception use.

In my opinion, as stated above, Mr. Witzke’s home can be constructed as proposed and would be accessory to the funeral home operation. But if additional dwellings are to be constructed on the site, I believe Petitioner would need to seek development or subdivision approval from Baltimore County. At a minimum, an approved subdivision would be required before Petitioner could lawfully convey any of the proposed dwellings independently of the overall parcel containing the funeral home. As such, I will not address this aspect of the special hearing request.

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).

The sole variance request concerns the row of parking spaces adjacent to Frederick Road, which have existed in this location for many years. As such the property is unique, and Petitioner essentially seeks to “legitimize” an existing condition. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because it would be required to remove several parking spaces used by the funeral home. 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.

THEREFORE, IT IS ORDERED this 20th day of **February, 2018**, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”): (1) to amend the previously approved site plan and zoning Order in Case No. 2014-0059-SPHXA to approve the construction of a 4,875 sq. ft. addition containing two viewing rooms; and (2) to approve the reconfiguration of the existing parking lot and the construction of a new parking area to support the new addition, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to allow a row of parking spaces as close as 4 ft. from a street right-of-way in lieu of the required 10 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 landscape and lighting plans for the site.
3. Petitioner must comply with the ZAC comment submitted by the SHA, a copy of which is attached hereto.
4. Petitioner or subsequent owner/lessee shall not be permitted to operate a crematory on the subject property.
5. Petitioner must comply with the ZAC comment submitted by DEPS, 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