

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(15819 Old York Road)		
10 th Election District	*	OFFICE OF
3 rd Council District		
Manor Tavern Real Estate, LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2018-0240-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed on behalf of Manor Tavern Real Estate, LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”) as follows: (1) to approve a Modified Parking Plan, to permit: (A) 129 parking spaces in lieu of the required 200 parking spaces for an existing restaurant, dwelling, office and storage uses; (B) Business parking in a residential (RC 2) zone; (C) Overflow parking on the subject property of an additional 33 spaces to be non-durable, non-dustless and unstriped; (D) Overflow parking on an offsite location approximately 1,200 ft. from the subject property; and (E) to permit a residentially improved lot in an RC 2 zone with an area of .54 acres in lieu of the minimum one acre. A site plan was marked and admitted as Petitioner’s Exhibit 1.

Zachary Wilkins, Terry Lombardi, George Batlas, Jim Franzoni and Bernadette Moskunus appeared in support of the petition. Lawrence E. Schmidt, Esq., represented the Petitioner. Michael McCann, Esq., appeared on behalf of the Manor Conservancy, which opposed certain aspects of the petition. 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”), suggesting Petitioner should be required to maintain the existing

trees and vegetative buffer at the front of the site.

Special Hearing

For the most part this case concerns the parking requirements imposed by the BCZR, and the petition seeks relief for certain long-existing deficiencies at the site. The only other issue in the case concerns the “existing dwelling” shown on the site plan. That dwelling was constructed 100+ years ago, and obviously qualifies as a nonconforming structure under BCZR §104.

The dwelling may remain and be used as such, subject of course to the restrictions and limitations imposed by BCZR §104 and the case law concerning nonconforming uses. As discussed at the hearing, the single-family dwelling is not situated on its own “lot,” but is on a separate parcel with its own tax identification number. This means the dwelling cannot be conveyed separately from the overall tract containing the restaurant and other structures. In light of the above, special hearing request “E” will be dismissed as unnecessary.

One other preliminary issue involves the proposed overflow parking at Saint James Church. Under the zoning regulations off-site parking must be located within 500 feet of the use (BCZR §409.7.B.1), although in special hearing request “D” Petitioner requests approval for such parking to be located 1,200 feet from the restaurant. In a 2016 letter, the Church indicated it would permit its property to be used as an “auxiliary parking facility” for the Manor Tavern. Pet. Ex. No. 6. But in a 2018 letter (Prot. Ex. No.1) the Church clarified Petitioner would be able to use “up to four times a year for special events parking” a one acre portion of its site located at the intersection of Old York and Monkton Roads. The important point, for present purposes, is that the area of the Church designated for off-site overflow parking for the restaurant is less than 500 feet walking distance from that use, and as such request “D” is also unnecessary.

Parking Issues

The primary issues in this case concern the location and number of parking spaces provided for the Manor Tavern. The site plan indicates 200 parking spaces are required and according to the calculation (Pet. Ex. No. 1, note 4) this encompasses the restaurant, outdoor tents and bar, office and single-family dwelling. According to the petition and plan 129 spaces are provided, which equates to 35% less than the number of spaces required by the regulations.

Based on a Google Earth photo submitted after the hearing, the Protestant contends that in fact fewer than 129 spaces exist at present. Ms. Moskunas, whose firm prepared the plan, disagreed and noted the parking lot will need to be restriped and reconfigured as shown on the site plan to reflect 8.5' x 18' spaces in compliance with BCZR §409. Ms. Moskunas stated many of the existing spaces shown on the Google photo are of different sizes and that some are “rather large.” In any event, I can only consider the Petition as filed, and Petitioner will need to satisfy Baltimore County that 129 spaces are provided on site.

Relief is sought under BCZR §409.12, which permits the Administrative Law Judge to approve a modified parking plan if a petitioner would experience an “undue hardship” if the parking regulations were strictly interpreted. I believe, as discussed at the hearing, this section of the BCZR is an appropriate method by which to rectify this deficiency. Protestant’s counsel contends the proper request should be for variance relief under BCZR §307, not BCZR §409.12.

Assuming for sake of argument this was a variance request for the number of parking spaces, I believe Petitioner would still be entitled to relief. The property is unique in a zoning sense since it is an historic and iconic landmark in the Monkton area. In addition, Petitioner would only need to establish a “practical difficulty,” not an undue hardship. *Cromwell v. Ward*, 102 Md. App. 691 (1995).

In any event, I find Petitioner would experience an undue hardship if relief was not granted, since the only alternative would be to close or reduce the size of the restaurant. The regulations also require an inquiry under BCZR §502.1 when considering a modified parking plan. In this regard, there is no indication whatsoever that the parking situation at the Manor Tavern has had a detrimental impact upon the community, and special hearing request “A” will therefore be granted.

The next request - - for business parking in the RC 2 zone - - appears to be the most problematic for the community. Protestant’s counsel noted the RC 2 land surrounding the restaurant has long been considered a buffer between commercial and residential uses. I agree, and this proposition was a pivotal factor considered by the County Board of Appeals (CBA) when it prohibited an “outdoor reception garden” in an “R.C.2 buffering area.” Pet. Ex. No. 5, at p. 11. The reception garden at issue in the 1991 CBA case would have been located in the same area now proposed for “overflow parking.”

Perhaps more importantly, I do not believe (with one exception noted below) Petitioner would experience an “undue hardship” under BCZR §409.12 if this request was denied. As shown on the plan, Petitioner proposes “overflow parking” on this portion of the site, which would be primarily for staff/employee parking. Petitioner’s representatives testified this area has only been used approximately five times per year since it acquired the property in 2011. On those infrequent occasions when additional spaces are required, employees could park off-site at the St. James Church which, as noted earlier, will permit parking on its property four times per year.

While I believe the restaurant’s new owners are conscientious and good stewards of their land, the problem is that such relief would “run with the land” and future owners might seek to

intensify their activities in this portion of the site. The land in question is zoned RC 2, which is the most restrictive zoning classification in the BCZR. Commercial activities (at least of a non-agricultural nature) are simply not appropriate in that zone.

I do, however, believe Petitioner should be allowed to continue using the nine (9) paved and striped parking spaces on the northwest corner of the existing parking lot. While these nine spaces are entirely within the RC 2-zoned portion of the property, they are located within the paved portion of the site. In addition, they were shown as existing on the 1991 “Preliminary Site Plan” submitted in CBA No. R-91-115 (Pet. Ex. No. 5). These spaces have been used for customer parking for 25+ years and are not located within the RC 2 “buffering area” referenced by the CBA in the 1991 case.

THEREFORE, IT IS ORDERED this 22nd day of **June, 2018** by this Administrative Law Judge, that the Petition for Special Hearing: (1) to approve a Modified Parking Plan, to permit: (A) 129 parking spaces in lieu of the required 200 parking spaces for an existing restaurant, dwelling, office and storage uses, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Hearing to approve: (B) Business parking in a residential (RC 2) zone, be and is hereby GRANTED in part and DENIED in part. Petitioner shall be permitted to continue using the nine paved parking spaces at the northwest corner of the existing lot, but overflow parking shall not be permitted on the unpaved northeastern portion of the site.

IT IS FURTHER ORDERED that the Petition for Special Hearing to approve: (C) Overflow parking on the subject property of an additional 33 spaces to be non-durable, non-dustless and unstriped, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Special Hearing to permit: (D) Overflow

parking on an offsite location approximately 1,200 ft. from the subject property; and (E) a residentially improved lot in an RC 2 zone with an area of .54 acres in lieu of the minimum one acre, be and is hereby DISMISSED as unnecessary.

The relief granted herein shall be subject to and conditioned upon 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. Existing vegetative buffers surrounding the subject property must be maintained in their current location and condition.

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

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln