

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(7909 Pulaski Highway)	*	OFFICE OF
15 th Election District		
7 th Council District	*	ADMINISTRATIVE HEARINGS
PIC Capital, LLC	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
Petitioner	*	Case No. 2019-0012-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 PIC Capital, LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) as follows: (1) to approve as non-conforming uses, in accordance with BCZR Sections 500.7 and 104, two (2) residential apartments on the second floor and the commercial use of the first floor of the existing structure; the front and side yard setbacks for the existing structure; and the existing location, configuration and number of residential and commercial parking spaces on the subject property; and (2) alternatively, if the non-conforming determination regarding parking is not approved, approve in accordance with BCZR Section 409.12.B, a modified parking plan for the residential and commercial uses on the subject property.

As an alternative, if the special hearing petition is not granted, a petition for variance seeks: (1) to permit an existing front yard of 13.1 ft. in lieu of the 50 ft. required on a dual highway; (2) to permit existing side yard setbacks of 1.8 ft. and 2.4 ft. in lieu of the 30 ft. required; (3) to permit the existing three (3) parking spaces for the residential uses; to permit two (2) parking spaces for a neighborhood car rental agency in lieu of the five (5) required, together with five (5) rental vehicle spaces; to permit the existing parking spaces as presently configured and located; (4)

irrespective of the requested non-conforming determination, to permit the display of rental vehicles more than 15 ft. in front of the required front building line; and (5) for such additional relief as the nature of this case may require for approval of the residential and commercial uses shown on the plan which accompanied this Petition. A site plan was marked and accepted into evidence as Petitioner's Exhibit 1.

Professional engineer John Motsco and Peter Charchalis appeared in support of the requests. Howard L. Alderman, Jr., Esq. represented the Petitioner. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning ("DOP"). That agency did not oppose the requests.

SPECIAL HEARING

This case involves a two-story building on Pulaski Highway. According to the affidavit of Thomas Beard (Pet. Ex. 3), Charles Beard (the affiant's father) built the structure in 1939, which had a restaurant known as Charley's Country Cooking on the first floor and two (2) rental apartments on the second floor. *Id.* at ¶3. The affidavit thereafter identifies several family members who owned and occupied the property throughout the intervening years. The affiant states the restaurant was operated until 2007, at which time the first floor commercial space was leased to an "automotive establishment" [*i.e.*, a neighborhood car rental agency]. *Id.* at ¶9. The affiant states that in 2017 the property was sold to Petitioner, which was the first "non-Beard family member to own the property." *Id.* at ¶14.

As counsel noted, Section 104 of the Zoning Commissioner's Policy Manual expressly authorizes affidavits in nonconforming use cases. I believe the detailed facts recited in the

affidavit, submitted by an individual with personal knowledge of the property's use and history, support Petitioner's claim of a nonconforming use(s) and structure under BCZR Section 104.

The nonconforming use determination applies to the commercial and residential (two apartment units) uses of the property, the existing setbacks, and the existing off-street parking areas at the front and rear of the building as shown on the plan. The site plan shows a total of ten (10) spaces are provided, and it allocates these spaces as follows: three (3) spaces for the apartments and five (5) spaces for the neighborhood car rental use. There are two additional spaces which can be used for rental vehicles, and in conjunction with the other five spaces allocated for this use I believe sufficient parking exists on site. While the parking areas are paved, the spaces are not striped. I concur with the DOP that the spaces should be striped, as it would improve the appearance and functionality of the site.

Two additional issues were identified in the DOP ZAC comment. The first concerned whether Petitioner had the right to park vehicles at the front of the site in an area which intrudes (at least partially) into the State highway right-of-way. Counsel stated on June 15, 2018 he spoke with Richard Zeller at the SHA, who indicated that agency was aware of this issue. The SHA issued a ZAC comment dated July 23, 2018 stating that agency did not object to the zoning requests. The other issue raised by the DOP concerned whether there was adequate sight distance for motorists exiting the parking spaces at the front of the property. John Motsco, a professional engineer accepted as an expert, testified there was over 3,000 feet of unobstructed sight line at this location, and he submitted two photographs showing this condition. Pet. Ex. 8A & B.

THEREFORE, IT IS ORDERED this 12th day of **October, 2018**, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to Section 500.7 of the BCZR: (1) to approve as non-conforming uses, in accordance with BCZR Sections 500.7 and 104, two (2)

residential apartments on the second floor and the commercial use of the first floor of the existing structure; the front and side yard setbacks for the existing structure; and the existing location, configuration and number of residential and commercial parking spaces on the subject property, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance be and is hereby DISMISSED without Prejudice as Moot.

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 obtain from Baltimore County rental housing license(s) for each apartment.
3. Petitioner must within 60 days of the date hereof install appropriate plants and/or other vegetation in the planter boxes at the front of the building.
4. All signage on the subject property must comply with BCZR §450, and no temporary signs or banners shall be permitted at the site.
5. Petitioner shall within 90 days of the date hereof stripe the ten (10) off-street parking spaces shown on the site plan.

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