

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(11117 Reisterstown Road)	*	OFFICE OF
4 th Election District		
2 nd Council District	*	ADMINISTRATIVE HEARINGS
Solov 13 LLC	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
Petitioner	*	Case No. 2019-0042-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 Solov 13, LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) as follows:

LOT 1 – (1) to approve the non-conforming status of the existing commercial use, retail; (2) to approve the non-conforming status as to the number and location of existing parking spaces; and (3) for approval of a modified parking plan for the existing setbacks and drive aisles.

LOT 2 – (1) To approve the non-conforming status of the existing building setbacks; (2) To permit continued access to Reisterstown Road through an existing easement agreement; and (3) To confirm that the lot size requirements of Section 102.4 do not apply to Lot 2.

A petition for variance seeks:

LOT 1 – (1) to permit 100% of the aggregate adjusted gross floor area of an existing building to be occupied by a commercial use in lieu of the maximum 10%; (2) to permit six (6) parking spaces in lieu of the minimum required eight (8) spaces; (3) to allow an existing driveway width of 9.0 ft. in lieu of the required 20 ft. for 2-way traffic; (4) for an existing 2-way drive aisle of 9.0 ft. in lieu

of the required 22 ft. for 2-way traffic; and (5) to allow an existing front yard setback for a non-residential principal building of 7 ft. in lieu of the required 25 ft.

LOT 2 – (1) to allow an existing side building face to tract boundary setback of 0.5 ft. in lieu of the required 15 ft.; (2) to allow an existing side building face to tract boundary setback of 8.0 ft. in lieu of the required 15 ft.; (3) to allow an existing rear building face to rear property line setback of 4.0 ft. in lieu of the required 30 ft.; and (4) for a lot area of 12,250 sq. ft. in lieu of the required 20,000 sq. ft. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Nella Solovyovsky and professional engineer Dwight Little appeared in support of the requests. Adam M. Rosenblatt, Esq. and Jennifer Frankovich, Esq. represented the Petitioner. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (“DOP”) and the Department of Environmental Protection and Sustainability (“DEPS”). Neither agency opposed the requests.

SPECIAL HEARING

This case concerns a unique property located in Owings Mills. The property is approximately 0.924 acres in size and zoned OR-2. Petitioner purchased the property in 2015, at which time the improvements on the site were in deplorable condition. There is located on the property a commercial building adjacent to Reisterstown Road and two single-family dwellings in the rear portion of the parcel.

Ms. Solovyovsky prepared a detailed synopsis of the history of the commercial building, beginning with its use in the 1940’s as a grocery store, which use continued until approximately 1975. Thereafter the building was used for appliance sales/service, locksmith and a consignment store, which is the present use. Ms. Solovyovsky provided phone book and crisscross directory

listings (Pet. #6) for each of the commercial uses noted above, which is compelling evidence concerning the lawful nonconforming use of the property. The commercial building setbacks are deficient, although Petitioner has sought variance relief for this condition, which has existed since the building was constructed in 1926.

As concerns the two single-family dwellings on the property, those are lawful since dwellings are permitted by right in the OR-2 zone. As with the commercial building, the long-existing setbacks for the dwellings are deficient and will be legitimized with variances. Petitioner is in the process of obtaining minor subdivision approval for this property, which would create three lots. Lot 1 would contain the existing commercial building and a single-family dwelling (#11119), Lot 2 would contain one single-family dwelling (#11121) and Lot 3 would be improved with a proposed dwelling accessed via Walk Avenue at the rear of the site.

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 subject property is long and thin and has irregular dimensions. As such the property is unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because it would be required to raze or relocate structures which have been in existence for nearly 100 years. Finally, I find that the variances can be granted in harmony with the spirit and intent of the BCZR, 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 County and/or community opposition.

I share the DOP's concern regarding the two parking spaces shown on the plan adjacent to Reisterstown Road, which may even intrude upon the SHA's right-of-way according to Mr. Little. As such, I will not approve these as off-street parking spaces but will allow the owner/tenants to use them for loading/unloading or deliveries at the commercial building.

THEREFORE, IT IS ORDERED this 5th day of **November, 2018**, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to Section 500.7 of the BCZR to:

(1) approve the lawful non-conforming status of the existing commercial use at 11117 Reisterstown Road (retail); (2) permit continued access to Reisterstown Road by two single-family dwellings (11119 & 11121 Reisterstown Road) through an existing easement agreement (recorded at 40027/54), pursuant to BCC Section 32-4-409(c); and (3) confirm that the lot size requirements of BCZR Section 102.4 do not apply to Lot 2 shown on the site plan, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit six (6) parking spaces in lieu of the minimum required eight (8) spaces; (2) to allow an existing driveway width of 9.0 ft. in lieu of the required 20 ft. for 2-way traffic; (3) for an existing 2-way drive aisle of 9.0 ft. in lieu of the required 22 ft. for 2-way traffic; (4) to allow an existing front yard setback for a non-residential principal building (#11117) of 7 ft. in lieu of the required 25 ft.; (5) to allow an existing side building face to tract boundary setback (#11121) of 0.5 ft. in lieu of the required 15 ft.; (6) to allow an existing side building face to tract boundary setback (#11121) of 8.0 ft. in lieu of the required 15 ft.; and (7) to allow an existing rear building face to rear property line setback (#11121) of 4.0 ft. in lieu of the required 30 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. The site plan must be amended within 30 days of the date hereof with a redline note indicating the two “existing parking” spaces along Reisterstown Road may be used for loading/unloading only.
 3. Prior to issuance of permits Petitioner must comply with the ZAC comment submitted by DEPS, a copy of which is attached.

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