

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(9541 Belair Road)	*	OFFICE OF
11 <sup>th</sup> Election District		
5 <sup>th</sup> Council District	*	ADMINISTRATIVE HEARINGS
The Huang's Group, LLC	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
Petitioner	*	<b>Case No. 2019-0282-SPHA</b>
* * * * *		

**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 The Huang’s Group, LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve commercial parking in a DR 3.5 residential zone. In addition, a Petition for Variance was filed pursuant to BCZR Section 229.6.C to allow a zero foot commercial side yard setback in lieu of the required 10 ft. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

David Huang and surveyor Bruce Doak appeared in support of the requests. J. Neil Lanzi, Esq. appeared and represented the Petitioner. There were no protestants or interested citizens in attendance at the hearing. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Environmental Protection and Sustainability (“DEPS”) and the Department of Planning (“DOP”).

**SPECIAL HEARING**

Petitioner owns an unimproved lot 0.75 acres in size located in the Perry Hall area. The lot fronts on Belair Road and is split zoned with the BL zoned portion along Belair Road and a

DR 3.5/DR 16 portion at the rear of the site. Petitioner worked with both the Perry Hall Improvement Association and neighboring property owners to design the layout of the site, which would feature a commercial building with accessory parking. The consensus was that parking should be at the rear of the site, similar to the other commercial enterprises on Belair Road which are near the subject property. It was this design choice which necessitated the petition for special hearing to permit commercial parking in a residential zone.

BCZR Section 409.8 permits such an arrangement provided Petitioner can show (among other things) that the use would not have a detrimental impact upon the community. Mr. Doak described in detail the layout of the parking and noted Petitioner will plant a substantial landscape buffer (between 10 and 40 ft. in width) which will shield the parking facility from the only adjoining single-family dwelling and a condominium complex across the street bordering the rear of the site. Mr. Doak opined the use would not have a negative impact upon the community and that the proposal satisfied BCZR Section 502.1. I am persuaded by that testimony and will grant the petition for special hearing.

#### 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).

Though the lot is 0.75 acres in size it has only 60 ft. of frontage on Belair Road. As Mr. Doak also testified there is a significant grade change across the site. As such the property is unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty

because it would be unable to construct the proposed commercial building. Finally, I find that the variance 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.

The DOP's ZAC comment was received on the day of the hearing. That agency did not oppose the zoning requests but suggested an additional variance was required to address RTA requirements. Under the BCZR the condominiums at the rear of the property would not generate an RTA, although the one single-family dwelling at the southwest corner of the site would. BCZR §1B01.1.B.1.b(1). The RTA regulations further specify that a parking lot (including one permitted under Section 409.8.B, as here) must have a 50 foot buffer and 75 foot setback. BCZR §1B01.1.B.1.e(5). As shown on the site plan Petitioner proposes a 40 foot buffer in the area adjacent to the dwelling, which would contain grass and "deciduous trees to be planted per the Landscape Manual."

In its ZAC comment the DOP noted Petitioner submitted a compatibility narrative and that agency "recommends the development will not adversely affect the community." In light of that recommendation, and pursuant to BCZR Section 1B01.1.B.1.c(1), I find the amount of RTA shown on the site plan for this "vacant" tract is sufficient and will not have a negative impact upon the community. While the aforementioned regulation indicates the granting of this relief is not subject to Section 307, the caption of the subjection refers to "variance of RTA" and the petition will therefore be amended to include this additional variance request.

THEREFORE, IT IS ORDERED this 17<sup>th</sup> day of **May, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to Section 500.7 of the Baltimore County

Zoning Regulations (“BCZR”) to approve commercial parking (for 23 passenger vehicles) in a DR 3.5 residential zone, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to allow a zero foot commercial side yard setback in lieu of the required 10 ft. and to approve a 40 foot RTA buffer in lieu of the required 50 foot buffer and 75 foot setback, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- 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.
- Prior to issuance of permits Petitioner must provide the DOP an updated site plan showing proposed lighting, fencing and orientation of the retail buildings.
- Prior to issuance of permits Petitioner must provide a grass landscape buffer with deciduous trees as shown on the site plan, in compliance with Landscape Manual requirements.
- Prior to issuance of permits Petitioner must comply with the Forest Conservation Regulations.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:sln