

IN RE: PETITIONS FOR SPECIAL	*	BEFORE THE
EXCEPTION AND VARIANCE	*	OFFICE OF
(1202 Middle River Road)	*	ADMINISTRATIVE HEARINGS
15 th Election District	*	FOR BALTIMORE COUNTY
6 th Council District	*	
SS & AA Singh, LLC	*	
<i>Legal Owner</i>	*	
Petitioner	*	Case No. 2019-0395-XA
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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 1202 Middle River Road. The Petitions were filed on behalf of SS & AA Singh, LLC, legal owner of the subject property (“Petitioner”). The Special Exception petition seeks approval to permit a service garage in a BL and MLR zone, pursuant to Baltimore County Zoning Regulations (“BCZR”) Section 230.3. The Petition for Variance seeks: (1) to permit a side yard setback of 13 feet in lieu of the required 30 feet; and (2) to permit a rear yard setback of 27 feet in lieu of the required 40 feet. A site plan was marked as Petitioner’s Exhibit 1.

Appearing in support of the petitions were David and Sharon Singh, the property owners. Timothy M. Kotroco, Esq. represented the Petitioner. Landscape Architect Matt Bishop of the firm Colbert Matz Rosenfelt was accepted as an expert and attested that he had prepared the Site Plan (Exhibit 1), as well as a red-lined plan that was submitted as Exhibit 2. 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 Bureau of Development Plans Review (“DPR”). Neither agency opposed the request, subject to their comments.

The subject property is approximately 33,541 square feet in size and split- zoned BL, ML & MLR. Mr. Kotroco offered aerial photos from the County's My Neighborhood site which showed the commercial nature of the surrounding area (Exhibit 3); and which showed the old, abandoned residence on the property (Exhibit 4), which will be razed according to the Site Plans. Mr. Kotroco explained that the proposed conversion of this property from an abandoned residence to a viable commercial property is a positive development for the County. The petitioners have operated a body shop on Belair Road for a number of years but they have been renting that property and they have recently purchased the subject property in order to keep and grow their business in Baltimore County. As shown in Exhibit 3, this proposed special exception use is entirely in keeping with the surrounding commercial uses.

SPECIAL EXCEPTION

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. *Schultz v. Pritts*, 291 Md. 1 (1981). The *Schultz* standard was revisited in *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use.

In the instant case Mr. Kotroco proffered that if asked to testify Mr. Bishop would explain that all the factors in BCZR 502.1 were met by the proposed site plan and that this project will have no greater adverse impact than that inherently associated with this special exception use if it were located anywhere else in these zones.

Based on the testimony and evidence I am satisfied that the legal requirements for a special exception have been proven in this case. Indeed I find that this proposed Plan is an ideal use of the property and will positively impact the public health and welfare, especially as compared with the abandoned residence that currently exists. The special exception will therefore be granted.

VARIANCES

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 the variance relief is denied the Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

In this case there are several unique aspects of the property. First, it is an irregularly shaped lot which impacts the siting of the proposed structure. Second, there is a substantial slope from the front to the rear of the property which impacts siting, primarily as it relates to parking. Finally, there are wetlands on the adjoining property to the rear which create the need for buffering and stormwater management, as depicted in the red-lined plan (Exhibit 2). As such the property is unique within the meaning of the law.

Regarding the second prong of the analysis, I also find that the Petitioner would experience practical difficulty and hardship if the variances were not granted. As discussed above, the dimensions and topography of the site require that the proposed structure and parking be located as depicted on the Site Plans. If the BCZR setbacks were strictly interpreted Petitioner would suffer a practical difficulty since it would make the site plan untenable and they would be unable to operate the proposed service garage on property they have already purchased for this use. I find that the engineer sited the building so as to conform with the BCZR to the extent possible. Finally,

I find that the variances can be granted in harmony with the spirit and intent of the BCZR, and without injuring the public health, safety, and general welfare. This is demonstrated by the lack of County and/or community opposition.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 8th day of **October, 2019**, that the Petition for Special Exception to permit a service garage in a BL and MLR zone, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit a side yard setback of 13 feet in lieu of the required 30 feet; and (2) to permit a rear yard setback of 27 feet in lieu of the required 40 feet, be and is hereby GRANTED.

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. Prior to issuance of Permits, Petitioner must comply with the ZAC comments submitted by the DOP and the DPR, copies of which are attached hereto and made a part hereof.

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

Signed _____
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/sln