

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(6080 Falls Road)	*	OFFICE OF
3 rd Election District	*	ADMINISTRATIVE HEARINGS
2 nd Council District	*	
Lake Falls Village Limited	*	FOR BALTIMORE COUNTY
Partnership, LLLP, <i>Legal Owner</i>	*	
Petitioner	*	Case No. 2019-0432-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 Lake Falls Village Limited Partnership, LLLP, legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”): (1) to approve an amendment to the previously approved site plan in Zoning Case No. 1997-0272-X; (2) commercial parking in a residential zone pursuant to BCZR Section 409.8 B for six (6) existing parking spaces that partially extend into the adjacent DR 3.5 zone and partial drive aisle in DR 2; (3) a modified parking plan under BCZR Section 409.12.B to allow the existing surface parking lot containing 184 parking spaces as shown on the Plan to Accompany Petition for Zoning Hearing to serve the proposed uses on the property, which would otherwise require 207 parking spaces; (4) for modification of the Residential Transition Area (“RTA”) under BCZR Section 1B.01.1.B.1.C (2); and (5) to permit the existing surface parking to be located within the 50-ft. RTA buffer and the 75-ft. RTA setback otherwise required by BCZR Section 1B.01.1.B.1.E (3). In addition, a Petition for Variance was filed pursuant to BCZR as follows: (1) from BCZR Section 409.6 to permit 184 existing parking spaces in lieu of the 207 parking spaces required; (2) from BCZR Section 409.8.A.4 to permit existing parking spaces to be as close as four (4) ft. from the right-of-way line of a public street,

in lieu of the ten (10) ft. required (no new development proposed); and (3) from BCZR Section 1B01.1.B.1.E.5 to permit an RTA setback of zero (0) ft. in lieu of the 75 ft. required in order to accommodate an existing surface parking lot (no new development proposed). A redlined site plan was marked and accepted into evidence as Petitioner's Exhibit 1.

John Harrington, Senior Vice President of MacKenzie Commercial Real Estate Services, LLC and one of the tenants, Jennifer Howell, the owner of the Corner Pantry, a restaurant in the Lake Falls Village center appeared in support of the requests. Dino La Fiandra, Esq. represented the Petitioner. Steve Warfield, the professional engineer who sealed the redlined plan also attended. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. No substantive Zoning Advisory Committee ("ZAC") comments were received from any of the County reviewing agencies.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Because there were no protestants Mr. La Fiandra was allowed to proffer the following: He explained that the tenant, Corner Pantry was now occupying approximately 1200 square feet of space in the development and that because of the success of her business she wishes to double the size of her restaurant, thus necessitating the requested relief. He explained that the Lake Falls Village development was built in 1982 and that under the then existing BCZR the expanded restaurant space of 2400 square feet would require 207 parking spaces, which is what was depicted on the original blacklined site plan that was filed on August 19, 2019. However, in preparing for this hearing Mr. La Fiandra and Mr. Warfield realized that the proposed plan is covered by the "shared parking adjustment" in current BCZR Sec. 409.6.B.3. As a result, Mr. Warfield prepared the redlined plan (Exhibit 1) with a "Shared Parking Analysis" Table which shows that the "adjusted" required number of spaces is only 159. Mr. La Fiandra explained that since there are

184 existing spaces they do not need the Variance requested in paragraph 1 of the Variance request. However, as he further explained, since the shared parking adjustment is part of the current BCZR they must comply with all other aspects of the current BCZR. Therefore, under paragraph 3 of the Special Hearing relief, he requested that they be relieved from complying with any minor discrepancies between the existing parking and the current BCZR. For instance, Mr. Warfield pointed out that at the back of the property the parking spaces are only 15 feet and under the current regulations they are supposed to be 18 feet. Mr. La Fiandra asked that this general relief be granted under paragraph 5 of the Special Hearing request.

With regard to paragraph 2 of the Special Hearing relief, Mr. Warfield explained that when the GIS line was created it did not precisely mirror the property line. As a result, on the south side of the property there is a very small section of the property that is now in the DR 3.5 zone, which partially extends into 6 of the existing parking spaces, thereby constituting commercial parking in a residential zone.

The relief requested in paragraph 4 of the Special Hearing is also a result of the GIS anomaly discussed above. Hence the Petitioner needs relief from the RTA buffer and setback requirements. Mr. La Fiandra explained that if this relief is granted it will obviate the identical relief that is requested in paragraphs 3 and 4 of the Variance petition. With regard to paragraph 2 of the Variance relief, Mr. La Fiandra further explained that the parking spaces at the front of the property were built only 4 feet from the roadway and have existed there since 1982 and have caused no complaint or incident. He observed that several businesses in the vicinity along Falls Road have no parking out front and use the Lake Falls Village lot.

SPECIAL HEARING

Based on the foregoing I find that all of the conditions of BCZR Sec. 502.1 are satisfied and that the requested relief is in keeping with the spirit and intent of the BCZR and that it will not harm the public health, safety, and general welfare.

VARIANCE

As to the variance, it requires 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 property is split-zoned and is an irregularly shaped lot that is sandwiched between the Jones Falls and Falls Road. The rear section of the property is within the 100 year floodplain. As such, the property is unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because it would be unable to accommodate its tenant's proposed restaurant expansion. Further, 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 absence of County and/or community opposition. Finally, I note that the proposed restaurant expansion will not affect the existing exterior structure of the Lake Falls Village buildings or its existing exterior parking, features, or amenities.

THEREFORE, IT IS ORDERED this **21st** day of **October, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing: **(1)** to approve an amendment to the previously

approved site plan in Zoning Case No. 1997-0272-X; **(2)** to allow commercial parking in a residential zone pursuant to BCZR Section 409.8 B for six (6) existing parking spaces that partially extend into the adjacent DR 3.5 zone and partial drive aisle in DR 2; **(3)** a allow general relief, as necessary, from strict compliance with the parking requirements of the current BCZR; including, but not limited to, permitting the existing 15 foot spaces at the rear of the property in lieu of the required 18 foot spaces; **(4)** for modification of the Residential Transition Area (“RTA”) under BCZR Section 1B.01.1.B.1.C (2); and **(5)** to permit the existing surface parking to be located within the 50-ft. RTA buffer and the 75-ft. RTA setback otherwise required by BCZR Section 1B.01.1.B.1.E (3), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance as follows: (1) from BCZR Section 409.8.A.4 to permit existing parking spaces to be as close as four (4) ft. from the right-of-way line of a public street, in lieu of the ten (10) ft. required (no new development proposed, be and is hereby GRANTED.

- (1)** The variance relief requested in paragraphs 3 and 4 is now MOOT based on the Special Hearing relief granted above.
- (2)** The variance relief requested in paragraph 1 is MOOT based on the applicability of the Shared Parking Adjustment pursuant to BCZR Sec. 409.6.B.3, as depicted in the Shared Parking Analysis Table on the redlined Plan.

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.

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

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