

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(217 (formerly 90) North Point Blvd.) *	OFFICE OF
15 th Election District *	ADMINISTRATIVE HEARINGS
7 th Council District	
	FOR BALTIMORE COUNTY
8312 Pulaski, LLC	
Petitioner *	Case No. 2019-0459-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 8312 Pulaski, LLC. (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to amend the previous case (2016-0287-XA) order pertaining to the location of the proposed office trailer.

In addition, a Petition for Variance was filed pursuant to BCZR § 238.2 to permit a rear setback for the proposed office trailer of 10 ft. in lieu of the required 30 ft. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Daniel Henriquez appeared on behalf of Petitioner 8312 Pulaski LLC, and surveyor Bruce Doak appeared in support of the requests. Herbert Burgunder, III, Esq. represented Petitioner. There were no protestants or other interested persons in attendance. The Petition was advertised and posted as required by the BCZR. Substantive ZAC comments were received from the Department of Planning (“DOP”) and the State Highway Administration (“SHA”).

SPECIAL HEARING

Mr. Doak explained that the Petitioner seeks to amend the previous Order in Case No. 2016-0287-XA because of the need to accommodate the proposed septic system at the site. The

septic system is necessary because it would not be financially feasible to tie into the existing public sewer since the site is too far from the nearest sewage line. Perk testing was done at four locations on the site: A, B, C, and D. *See*, Petitioner’s Exhibit 5. All locations except “A” perked. However, as explained by Mr. Doak, additional septic reserve area (SRA) was required by DEPS and as a result the location of the sales trailer needed to be moved from the rear of the site, as had been approved by the prior Order, and as depicted in Petitioner’s Exhibit 3. The new proposed location of the sales trailer is atop the failed septic location “A” closer to the front of the lot. In addition the trailer is now at a 90 degree angle to the original location approved in the prior Order. *See*, Petitioner’s Exhibit 1. Based on the testimony and evidence I find that the Special Hearing relief requested is in keeping with the spirit and intent of the BCZR and will not adversely impact the public health, safety or welfare. The prior Order and site plan will therefore be amended to provide for the siting of the sales trailer as depicted on Petitioner’s Exhibit 1. Per the DOP comments, under the amended Order the use will remain a “used motor car outdoor sales area, separate from sales agency building.”

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 in question is potentially served by public sewer. However, the access point is so distant that connecting with the public sewer line would be cost prohibitive. In addition, the lot fronts the roadway on an angle and is long and narrow. As such, the property is unique. These

unique features necessitate the specific variance relief that is being requested. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because they would be unable to build and operate their proposed used car sales business. 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 absence of County and/or community opposition.

THEREFORE, IT IS ORDERED this **13th** day of **December, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing to amend the previous case (2016-0287-XA) order pertaining to the location of the proposed office trailer, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to BCZR § 238.2 to permit a rear setback for the proposed office trailer of 10 ft. in lieu of the required 30 ft., be and is hereby GRANTED.

IT IS FURTHER ORDERED that all of the provisions, relief, and conditions of the original ORDER in Case No. 2016-0287-XA shall remain in full force and effect, except for the variance relief provided in paragraph 3 of the ORDER, which is no longer needed under the new Site Plan, and the relief provided under paragraph 4 of the ORDER, which has been addressed above (wherein a variance permitting a 10 foot rear setback in lieu of a 30 foot rear setback is GRANTED). The previous ORDER is expressly incorporated herein and shall be made a part of the file.

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.

- Petitioner must comply with ZAC comments from DOP and SHA, 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
Administrative Law Judge
for Baltimore County

PMM:slh