

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b> *	BEFORE THE
<b>AND VARIANCE</b>	
(11700 Reisterstown Road) *	OFFICE OF
4 <sup>th</sup> Election District	
4 <sup>th</sup> Council District *	ADMINISTRATIVE HEARINGS
KD Associates Limited Partnership	
<i>Legal Owner</i> *	FOR BALTIMORE COUNTY
Maryland Food, LLC, <i>Contract Purchaser</i>	
Petitioners *	<b>Case No. 2019-0472-SPHA</b>

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**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of a Revised Petition for Special Hearing and Variance filed on behalf of KD Associates Limited Partnership, legal owner, and Maryland Food, LLC, contract purchaser (“Petitioners”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”): (1) to allow 33 parking spaces shown on the Plan to Accompany Petition for Zoning Hearing to serve the proposed uses on the property in lieu of the 57 which would be required; and (2) an amendment to the previously approved zoning site plan in zoning Case No. 95-224-A. In addition, a Petition for Variance was filed pursuant to Section 232.2 of the BCZR to allow a side yard setback of 9 feet on the street side of a corner lot in lieu of the required 10 feet. In the alternative to Special Hearing Request number 1, a variance from Section 409.6 of the BCZR to permit 33 spaces provided in lieu of the required 57 parking spaces. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Matthew Allen, John Laverty, and Sudhir Bastola appeared in support of the requests. Dino La Fiandra, Esq. represented Petitioners. Professional Engineer, Patrick Richardson, prepared the site plan and also appeared. 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 Bureau of Development Plans Review (“DPR”), the Department of Planning (“DOP”), the Department of Environmental Protection and Sustainability (“DEPS”) and the Department of Public Works (“DPW”). Subject to their comments none of the agencies opposed the requested relief.

### SPECIAL HEARING

Based on the testimony and exhibits I find that the Petitioner is entitled to the Special Hearing relief. Mr. Laverty has worked for Checkers Corporation since 1993 and is currently their Senior Construction Manager. He explained the Checkers drive-thru business model and what their experience had been nationally in terms of sales volumes, parking needs, and drive-thru capacity. In addition, Matt Allen, who represented the Landlord, Klein Enterprises, testified that this former bank drive-thru has been vacant for a number of years. Mr. Allen explained the tenant mixture in the adjoining shopping center and specifically described the abundance of parking capacity.

Based on comments from DOP concerning the proper interpretation of the “stacking” regulations in BCZR Sec. 409.10, and concerns about the potential impact of overflow from the drive-thru lanes onto Cherry Valley Road, I left the record open at the close of the hearing to allow Petitioner and counsel to brief this issue and provide any further supporting evidence. By letter dated December 9, 2010, Mr. La Fiandra provided further explanation and evidence. This letter and accompanying Traffic Study will be admitted, collectively, as Petitioner’s Exhibit 4. Specifically, Mr. La Fiandra explained that he and the engineer, Mr. Richardson, had met again with Joe Merrey from PAI, Zoning Review, and had again clarified with Mr. Merrey that this plan is considered a single drive-thru lane - even though two order windows and lanes are depicted -because there is only one “transaction” window where payment is made. Thus, because

it is a single lane drive-thru the regulations require only 10 stacking spaces in addition to the space at the transaction window, and that is what the redlined plan depicts.<sup>1</sup>

As to the potential overflow from the drive-thru lanes back onto Cherry Valley Road, Petitioner commissioned a “peak capacity” study performed by Traffic Concepts, Inc. This firm did a comparison study based on the only other single lane drive-thru Checkers in Baltimore County which is on Moravia Road, a road with similar traffic volume as Reisterstown Road. Based on that study, during Checkers’ peak time (Friday’s from 11:30 a.m. to 12:30 p.m.) only 24 cars went through the drive-thru and the longest “stacking” was four cars, and, according to the site plan in this case six stacking spaces will be provided at and behind the order boards. Therefore there is no reasonable fear of traffic backing into Cherry Valley Road. This study confirms the testimony of Mr. Lavery at the hearing, i.e., that nationwide there is a much smaller volume of customers at the average Checkers drive-thru as compared with Chic-Fil-A and McDonalds.

Based on the testimony and record evidence I find that the proposed 33 fixed parking spaces, in conjunction with the 10 stacking spaces, will provide more than enough parking capacity for this drive-thru restaurant with 3 outdoor tables. I further find that there should be no adverse impact on traffic or safety and that the requested relief can be granted within the spirit and intent of the BCZR and without injuring the public health, safety, and welfare. To the contrary, this relief will allow a now vacant property to be repurposed and revitalized.

#### 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

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<sup>1</sup> I note that the Revised Site Plan was “redlined” by hand at the hearing by Mr. Richardson, whereby he added the tenth stacking space to the plan. As this Order will state below, a formal redlined plan must be submitted showing that added space and also showing the proper 20 foot length for each space.

- 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 lot in question is of slightly irregular shape and, according to Mr. Richardson, there is a State Highway right of way along its border with Reisterstown Road to provide a turn lane onto Cherry Valley Road. As a result, there is only a 9 foot setback from Reisterstown Road to the existing canopy over the former bank drive-thru, and this canopy is preserved in the redevelopment plan. As such the property is unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would have to reconfigure the canopy and drive-thru lane for the purpose of adding one additional foot of setback. I also 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. <sup>2</sup>

THEREFORE, IT IS ORDERED this **13<sup>th</sup>** day of **December, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing: (1) to allow 33 parking spaces shown on the Plan to Accompany Petition for Zoning Hearing to serve the proposed uses on the property, in lieu of the required 57 spaces; and (2) an amendment to the previously approved zoning site plan in zoning Case No. 95-224-A, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to allow a side yard setback of 9 feet on the street side of a corner lot in lieu of the required 10 feet, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

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<sup>2</sup> Petitioners asked for a variance of the required number of parking spots (33 in lieu of 57) as an alternative to the same request via the Special Hearing. I find that this variance relief is, in the alternative, also appropriate and can be granted within the spirit and intent of the BCZR and without injury to the public health, safety, and welfare.

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners would be required to return the subject property to its original condition.
2. Prior to issuance of Permits, Petitioners must comply with all ZAC comments submitted by DPR, DEPS, DOP, and DPW, copies of which are attached hereto and made a part hereof. (The DOP comments regarding BCZR Sec. 409.1 have been addressed. *See*, Petitioner's Exhibit 4).
3. Prior to issuance of Permits, Petitioner shall submit a redlined Plan showing the 10 stacking spaces and indicating the required 20 foot lengths for each.

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

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

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