

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(6201 Baltimore National Pike)		
1 st Election District	*	OF ADMINISTRATIVE
1 st Council District		
Wal-Mart Estate Business Trust	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	CASE NO. 2019-0493-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Wal-Mart Estate Business Trust, legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief from Section 409.10.A of the Baltimore County Zoning Regulations (“BCZR”) to allow a total of two (2) stacking spaces for a drive-thru facility for a bank in lieu of the five (5) stacking spaces required. A site plan was marked as Petitioner’s Exhibit 1.

R. Michael Villarreal appeared in support of the petition. David H. Karceski, Esq. represented Petitioner. 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.

The site is approximately 33,802 sq. ft. in size and is split- zoned BR, CLL and DR 5.5. Mr. Karceski proffered the following: The plan is for a free-standing drive-up ATM on the parking lot of the Walmart/Giant Food shopping center at the corner of Baltimore National Pike and North Rolling Road in Catonsville. Mr. Karceski explained that this is a large parking lot that has more than ample parking for the existing businesses. He further explained that when the engineer was researching the property records he discovered a 1940 right-of-way easement held

by State Highways that crosses the very corner of the site and which makes it problematic to provide the required five stacking spaces for the ATM.

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).

This is an irregularly shaped parcel with a right-of-way easement partially traversing 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 drive-thru ATM. 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 5th day of **December, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from Section 409.10A of the Baltimore County Zoning Regulations (“BCZR) to allow a total of two (2) stacking spaces for a drive-thru facility for a bank in lieu of the five (5) stacking spaces required, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Within thirty days Petitioner shall submit a redlined Plan showing the MTA bus stop and depicting the proper 20 foot length for the 2 stacking spaces.
2. The site will be suitably landscaped.
3. The drive-thru lane shall be distinctly marked and must not block any other parking spaces.

4. 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

PMM:sln