

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(6072 Falls Road)		
9th Election District	*	OFFICE OF
2nd Council District		
Nancy L. Wilkey & Betty J. Ruano	*	ADMINISTRATIVE HEARINGS
<i>Legal Owners</i>		
	*	FOR BALTIMORE COUNTY
Petitioners		
	*	Case No. 2020-0174-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Special Hearing filed by Nancy J. Wilkey and Betty J. Ruano, legal owners of the property located at 6072 Falls Rd. (the “Property”). The Special Hearing was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) to alter the previous zoning decisions rendered in Case Nos. 92-322-A and 95-83-SPH, and in particular, to remove Restriction No. 2 from Case No. 92-322-A which permitted a variance of zero parking spaces in lieu of the required 5 parking spaces, but limited to an antique store use.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Petitioners Nancy L. Wilkey and Betty J. Ruano appeared at the hearing (the “Petitioners”) along with Patrick Richardson, Jr, P.E. who prepared the Site Plan. (Pet. Ex.1).

A ZAC comment was received from the Department of Planning (“DOP”) which opposed the requested relief. Department of Environmental Protection and Sustainability (“DEPS”) had no comment on the Petition. A letter was also received from People’s Counsel dated September 15, 2020 opposing the requested relief.

Evidence

The Property is a narrow site measuring approximately 5472 sf (.13 acres) and is zoned business-local (BL), with a small area zoned density-residential (DR 3.5) along the southern property line. It is located south of Lake Falls Village Shopping Center near the Baltimore County/Baltimore City line. (Pet. Ex. 2). The Property is improved with a home built in or about 1893. (Pet. Ex. 3).

For 25 years, the Petitioners have owned and operated an antique store at the Property. Approximately 3-5 years ago, in anticipation of selling the Property, they closed the store and began liquidating the inventory. Based on her research, Ms. Ruano testified that there are only 10 antique dealers remaining in Baltimore County. Most antique dealers are now located in shopping malls or sell items through the internet.

Mr. Richardson described the commercial businesses surrounding the Property including Lake Falls Village Shopping Center to the north and a hot dog stand to the south. To the east of the Property across Falls Rd. is a Royal Farms and other retail stores. There is parking along Falls Rd.

Ms. Ruano also testified that she and Ms. Wilkey have tried to sell the Property without a realtor. In their view, buyers are not willing to buy the Property due to the off-street parking required for uses in a BL zone (See BCZR, §409). (Pet. Ex, 4). On December 12, 2018, the Petitioners executed a contract of sale with a buyer who intended to use the Property for an art gallery (the "Contract"). (Pet. Ex. 5). The Contract was an "AS-IS", cash contract, and was not contingent upon the buyer obtaining zoning relief from Baltimore County for parking or otherwise. (Pet. Ex. 5). As the Contract reads, the buyer was the tenant of the Property and "has actual knowledge or all matters related to the Premises and accepts the Premises in AS-IS condition,

without warranty.” (See §5 of Contract, Pet. Ex. 5). While this Court is not suggesting that the Petitioners take legal action, it is not clear whether the Petitioners have or will pursue their legal rights under the Contract to demand that settlement occur as agreed.

By January, 2019, the same buyer attempted to change the contract terms by offering an Amendment to the Contract with terms more favorable to the buyer (the “Amendment”). (Pet. Ex. 6). The Amendment proposed to add a study period for the buyer to obtain approval from Baltimore County of “an acceptable parking scheme to accommodate Buyer’s intended use of the Premises, in Buyer’s sole and absolute discretion” and, if such government approval was not obtained, the buyer had the right to terminate the Contract. (See §1, Pet. Ex. 6). According to Ms. Ruano, the Petitioners refused to sign that Amendment. Yet, despite the absence of any contingencies for Baltimore County parking approval in the Contract, and despite the Petitioners refusing to sign the Amendment, the buyer unabashedly declared the Contract null and void and demanded the return of the earnest money deposit by letter dated March 12, 2019. (Pet. Ex. 7).

The prior zoning history of the Property revealed that, in 1992, Deputy Zoning Commissioner Timothy Kotroco granted the Petitioners an off-street parking variance which allowed zero parking spaces in lieu of the minimum required five (5) parking spaces (Case No.: 92-322-A). However, that variance was limited to use of the Property as an antique store. (See Restriction No. 2 - Case No.: 92-322-A) (the “1992 Parking Variance”).

In 1995, the Petitioners were issued a Code Violation for creating an 8 ft. driveway along the southern end of the Property. The driveway extended from Falls Rd. to a small gravel area to the rear of the Property (the “1995 Special Hearing Case”) (See Case No. 95-83-SPH). According to the findings of fact in the 1995 Special Hearing Case, the Petitioners had installed crusher run (or gravel) to create an employee parking area in the rear of the Property. Additionally, they had

extended the makeshift driveway to an alleyway located behind the Property. The Petitioners were using the driveway and the alleyway for deliveries made to the antique store. (*Id.*).

According to the 1995 Special Hearing Case, because the alleyway was intended for the use of the properties along Fairfield Avenue in the rear, the residents filed a Code Violation complaint. In response to the Code Violation citation, the Petitioners sought permission in the 1995 Special Hearing Case to continue to use the gravel parking area for (2) employee parking spaces and to continue to use both the alleyway and driveway for deliveries to the store. After agreement between the Petitioners and the residents, the requested relief was granted.

In this case, the Petition requests to “alter the previous zoning decisions rendered in Case Nos. 92-322-A and 95-83-SPH” and to “remove restriction number 2 from Case No. 92-322-A”. Admittedly, in order to attract potential buyers, the Petitioners want to be able to market the Property with no parking restrictions to any of the 70+ uses permitted in the BL zone. Under BCZR §409.6, the minimum number of required off-street parking spaces is dependent upon the particular type of use. By way of example, an office use would only require 3.3 spaces per 1,000 s.f. of gross area whereas a restaurant or retail use would require 5 per 1,000 s.f.

The variance granted in Case No. 92-322-A was restricted to the Petitioners’ use of the Property as an antique store. While an antique store is a retail use requiring 5 parking spaces, it is a benign retail use in regard to the limited number of customers coming to the store and thus, the customers’ limited need for parking spaces. In Case No. 95-83-SPH, the special hearing relief granting 2 parking spaces in the rear of the Property was for antique store employees only; no customers of the antique store were permitted to park on the rear gravel lot.

This is not the typical case where a contract purchaser and legal owner are jointly filing for a parking variance relief and/or special hearing relief where the fact finder can weigh the factors

required under BCZR §§307.1 and 500.7 respectfully for a proposed commercial use. In particular, when analyzing whether practical difficulty exists for variance relief, consideration must be given by the fact finder as to whether the compliance with the parking restrictions would unreasonably prevent a petitioner from using the property for a permitted purpose as well as the effect on neighboring properties. Similarly, where special hearing relief is requested, application of the zoning regulations and the rights of a petitioner in a property must be considered in the context of the proposed use. Each use would generate its own specific set of facts or circumstances which would need to be considered.

As a result, I will not grant prospective, open-ended, unlimited zoning relief to remove the parking restriction in Case No. 92-322-A, so that any of the 70+ permitted commercial uses in a BL zone would be free of parking regulations as set forth in BCZR. Likewise, I will not alter the restrictions in Case No. 95-83-SPH which were limited to employee parking, use of the driveway, or use of the alley in the rear of the Property so that any permitted commercial use can benefit from relief which was granted in the context of an antique store.

THEREFORE, IT IS ORDERED this 3rd day of **December, 2020** by this Administrative Law Judge, that the Petition for Special Hearing seeking relief to alter the previous zoning decisions rendered in Case Nos. 92-322-A and 95-83-SPH, and more particularly to remove the Restriction No. 2 to allow the parking variance for the property only while it is used as an antique store, be and it is hereby **DENIED**.

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

Signed
MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm