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| IN RE: PETITIONS FOR SPECIAL HEARING * | BEFORE THE |
| AND VARIANCE | |
| (9504 Philadelphia Road) * | OFFICE OF |
| (9506-9544 Philadelphia Road | |
| 14 th Election District * | ADMINISTRATIVE HEARINGS |
| 6 th Council District | |
| Rossville, LLC * | |
| <i>Legal Owners</i> | FOR BALTIMORE COUNTY |
| Tractor Supply Company * | |
| <i>Contract Purchaser/Lessee</i> | Case No. 2020-0200-SPHA |
| | |
| Petitioners * | |
| * * * * * | |

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 Rossville, LLC, legal owners, and Tractor Supply Company, contract purchaser/lessee (the “Petitioners”) in regard to the King’s Court Shopping Center located at 9504 Philadelphia Rd. and 9506-9544 Philadelphia Rd. in the Rosedale area (the “Shopping Center”). A Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BZCR”) to approve the sale of utility and trailers and trailer supplies in the BL zone. Variance relief from parking regulation BCZR, §409.6 was also filed to allow a total of 383 off-street parking spaces in lieu of the required 567 spaces. Variance relief from sign provisions under BCZR, §450.4 was requested to allow: (a) two (2) freestanding joint identification signs on one road frontage (Philadelphia Rd.) in lieu of the two permitted freestanding joint identification signs (one for Philadelphia Road and one for King Avenue) (Signs I.D. #1, I.D. #2) ¹; (b) two (2) free standing, joint identification signs with letter height for tenant

¹ The revised Petition for Variance dated November 30, 2020 requested zoning relief from Section 450.4 of the BCZR to allow two freestanding joint identification signs on one road frontage (Philadelphia Road) in lieu of the five permitted freestanding joint identification signs (one for each of the five road frontages – Philadelphia Road, King Avenue, Princess Drive, King Arthur Circle, King Charles Circle) (Signs I.D. #1, I.D. #2). At the time of filing the revised Petition, it was understood that each of the aforementioned five (5) roads were public roads which would permit the Petitioner to install five (5) signs. However, in the ZAC comment, Department of Public Works clarified that only Philadelphia Road and King Avenue were public roads; the remaining roads (Princess Drive, King Arthur Circle and King Charles Circle) are privately owned. That clarification notwithstanding, the requested relief to retain the two (2) existing signs on Philadelphia Rd. did not change.

names a minimum of three inches in height in lieu of the required eight inches (Signs I.D. #1, I.D. #2); and (c) for tenants in a multi-tenant building, two (2) wall-mounted enterprise signs on a façade with a separate exterior customer entrance in lieu of the one sign permitted (Signs B1 and B2), and to have one (1) wall-mounted enterprise sign on a façade without a separate customer entrance (Prop. Sign #3). Variance relief from BCZR, §409.8A.3 was requested to allow light standards in a surface parking facility without curbing or landscaping. Finally, Petitioners also seek all relief necessary for compliance with the Baltimore County Landscape Manual (2000).

Due to COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. David H. Karceski, Esquire, C. Andrew Robinson, Esquire, and Venable, LLP appeared on the behalf of Petitioners. There were no Protestants or interested persons in attendance. A Zoning Advisory Committee (“ZAC”) comment dated September 11, 2020 was received from the Department of Planning (“DOP”). DOP did not oppose the requested relief. A second ZAC comment dated August 20, 2020 was received by Department of Environmental Protection and Sustainability (“DEPS”) who also did not oppose the requested relief. Lastly, a comment was received from Department of Public Works (“DPW”) dated September 9, 2020 opposing the parking variance.

A three (3) sheet, red-lined site plan was prepared and sealed by Joseph J. Ucciferro, PE of Bohler Engineering (the “Site Plan”). (Pet. Ex. 1). Mr. Ucciferro was accepted as an expert in professional engineering, in BCZR, and in the burden of proof necessary for the special hearing, variance and other requested relief. (Pet. Ex. 2).

Evidence was presented by Mr. Karceski by way of proffer and witness testimony. The Shopping Center is approximately 6.19 acres with approximately 80,000 sf of gross leasable area and is known as King’s Court Shopping Center with addresses of 9504 Philadelphia Rd. and 9506-9544 Philadelphia Rd. It is zoned BL. With the exception of the Pizza Hut at 9504 Philadelphia Rd., as

depicted in an aerial photo, the Shopping Center is ‘L shaped’; a village center surrounded on three (3) sides by residential communities. (Pet. Ex. 3). The Shopping Center parking lot and view onto the surrounding residential streets are depicted in photographs. (Pet. Ex. 4). Rossville, LLC, the legal owner, purchased the Shopping Center in 2013 which, at that time, was 100% leased.

For 35 years, a Mars Supermarket had been the main anchor tenant (“Mars”). Unfortunately, Mars closed its doors in 2016. Since that time, while some smaller tenants remained, the vacancy rate has been at 77%. The current tenants are listed on the Site Plan and include Dunkin Donuts, Pizza Hut, Kings Court Liquor, Dry Cleaners, Old Philadelphia Inn, and Kings Nail and Tan.

The proposal here is to reinvest and improve the Shopping Center with two (2) new tenant anchors as follows: (1) Tractor Supply Company will occupy the former Mars site (24,673 sf) and will use some of the parking lot for outdoor display area (14,503 sf) to sell its utility trailers, lawn equipment and/or larger items for sale as itemized on the Display Merchandise list. (Pet. Exs. 7 and 8); and (2) Baltimore Medical System will occupy the corner space of the ‘L shaped’ configuration (14, 414 sf).

Tractor Supply Company has 1,800 stores in 49 states. An aerial photograph of the tractor supply store in Huntington, MD is illustrative. (Pet. Ex. 9). Proposed improvements to the Mars site will include the front façade as well as a new roof and a new LED sign. (Pet. Ex. 5). New sidewalks will be installed, the parking lot will be resealed with parking spaces relined, along with the implementation of new circular traffic patterns.

Mark Keeley, lead transportation planner with Traffic Concepts, Inc., was admitted as a traffic expert. (Pet. Ex. 10). Mr. Keeley testified in regard to the parking variance. As per the Site Plan, based on the total square footage in the Shopping Center, the BCZR requires 567 spaces. Analyzing the ITE Parking Manual, 5th Ed. for an integrated shopping center with large anchor stores, Mr. Keeley opined that highest peak hours occurred on Saturdays, generating the need for

the most parking spaces. The ITE Manual assumes that 2.91 parking spaces will be occupied per 1,000 sq. ft. With a total of 81,637 sq. ft. for the Shopping Center, he testified that the parking demand for the proposed tenants and existing tenants is 238 spaces. The Petitioner is proposing 383 spaces. In his opinion, at peak hours on Saturdays, only 60% of the existing parking spaces are utilized. Mr. Keeley separately studied each use in the Shopping Center under the ITE Manual and discovered that only 79% of the spaces are occupied on Saturday peak hours. Accordingly, it was Mr. Keeley's opinion that the proposed 383 spaces provide ample parking for the uses at this Shopping Center.

With regard to the Special Hearing BCZR, §500.7 to approve the sale of utility trailers and trailer supplies in the BL zone, I do not believe zoning relief of any sort is required for Petitioner to sell utility trailers at this site. The trailers in question are small utility trailers of the sort used by homeowners to transport mulch, garden supplies or hauling junk to the dump. A photo was submitted which show the type of trailers at issue. (Pet. Ex. 8). These trailers are no larger or heavier than the tractors and riding lawn mowers which would also be sold at this store (and at other "big box" retailers like Home Depot).

While I do not believe granting the Petition for Special Hearing would have a detrimental impact upon the community, I am concerned the approval could be construed as authority to sell at the Shopping Center other sorts of "trailers" (e.g., RVs or manufactured homes) as that term is defined in BCZR, §101.1. To eliminate any doubt on the point, I will grant the requested relief but permit sales of only the sort of utility trailers shown in the photos submitted at the hearing.

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).

The property is irregularly shaped. It juts out to include the existing Pizza Hut building (9504 Pulaski Hwy.) with its associated parking lot. Set in the middle of five (5) roads, the Shopping Center functions as a village center with integrated, established pedestrian paths between the Shopping Center and the adjacent residential communities. This peculiar relationship between the roads, pedestrian paths and this neighborhood Shopping Center has existed for decades. This uniqueness limits the Shopping Center's ability to provide more parking; there is no off-site acreage available. Moreover, a stream located at the north-western corner runs underneath the Shopping Center and further limits expansion.

With regard to the parking variance, Mr. Keeley's uncontroverted testimony was clear and convincing. I find that the proposed 383 parking spaces is ample parking for existing and proposed uses. I also find significant the DOP ZAC comment that, based on aerial photos of the Property, the parking lot has not been over half occupied since 1995. Although DPW raised a concern in its ZAC comment about overflow parking from the Shopping Center to King Avenue, I am not convinced, based on the evidence presented, that there will be undue hardship to the adjacent homes on King Avenue even if residential permit parking becomes pertinent, given the ample parking available at the Shopping Center for the existing and proposed uses.

Due to the unique characteristics of the Property, I find that the Petitioner would suffer a practical difficulty if the parking variance is not granted. Not only was the evidence persuasive that the existing parking is sufficient, in order for the Shopping Center to remain viable in this community and for Tractor Supply and Baltimore Medical Systems to lease space, the parking variance is necessary. In addition, if the Petitioner is also required to comply with the lighting standards for a surface parking facility without curbing or landscaping as required by BCZR,

§409.8.A.3, parking would be further reduced. Accordingly, a variance of the lighting standards is granted.

With regard to the requested sign variance, I find that based on the unique features of the Property and integrated neighborhood, the Petitioner would suffer a practical difficulty if one (1) of the two (2) existing signs on Philadelphia Rd. was removed and reinstalled on King Avenue. It is uncontroverted that, of the five (5) roads surrounding the Shopping Center, Philadelphia Rd. has the most visibility, with the most traffic. The larger of the two freestanding signs is located on Philadelphia Rd. at the main entrance to the Shopping Center. (Pet. Ex. 1). Conversely, King Avenue is primarily a residential street and as such, there would be an adverse impact to, and intrusion upon, the residents of King Avenue to have a freestanding sign relocated there. Additionally, while the letter height for tenant names on both freestanding signs is 3 inches (in lieu of 8 inches), the Tractor Supply logo at the top will add visibility. Accordingly, the variance for letter height will be granted.

Given the limited visibility near the corner of the 'L' shape of Shopping Center, the Petitioner would suffer a practical difficulty if two (2) wall mounted signs on the façade of Old Philadelphia Inn is not granted. In the same way, there would be an unreasonable hardship suffered by the Petitioner if its tenant, (Dunkin Donuts) does not have a wall mounted sign on the façade of its drive-thru. Accordingly, I find both requests are in strict harmony with the spirit and intent of the sign regulations and will not injure the public health, safety or welfare.

Finally, due to the physical limitations and age of the Shopping Center, the requested relief from compliance with the Baltimore County Landscape Manual (2000) is necessary. I grant this relief subject to the condition that the Petitioner work with the Baltimore County Landscape Architect to finalize all landscaping and fencing for the Shopping Center.

THEREFORE, IT IS ORDERED this 15th day of **December, 2020, by this Administrative**

Law Judge, that the Petition for Special Hearing seeking relief pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve the sale of utility trailers and trailer supplies in the BL zone (such as those shown in the attached photograph which is expressly incorporated into this Order) is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance relief from §409.6 of the BCZR to allow a total of 383 off-street parking spaces in lieu of the required 567 parking spaces is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance relief from §450.4 to allow: (A) two (2) freestanding joint identification signs on one road frontage (Philadelphia Rd.) in lieu of the two (2) permitted freestanding joint identification signs (one for each of the road frontages – Philadelphia Road and King Avenue) (Signs I.D. #1, I.D. #2); (B) freestanding joint identification signs with letter height for tenant names a minimum of three inches in height in lieu of the required eight inches (Signs I.D. #1, I.D. #2); and (C) for tenants in a multi-tenant building, two (2) wall-mounted enterprise signs on a façade with a separate exterior customer entrance in lieu of the one sign permitted (Signs B1 and B2) and one (1) wall-mounted enterprise sign on a façade without a separate customer entrance (Prop. Sign #3) is hereby GRANTED as set forth on the Site Plan; and

IT IS FURTHER ORDERED that the Petition for Variance relief from §409.8.A.3 to allow light standards in a surface parking facility without curbing or landscaping is hereby GRANTED; and

IT IS FURTHER ORDERED that any relief necessary for compliance with the Baltimore County Landscape Manual (2000) is hereby GRANTED.

The relief granted herein shall be subject to the following:

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 his 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. No permanent structures may be constructed and/or used in connection with the outdoor display area(s) shown on the plan.
3. No on-site rental and/or repair of any equipment or inventory offered for sale shall be permitted.
4. The Petitioner shall work with the Baltimore County Landscape Architect to devise a landscape plan to comply, to the greatest extent possible, with the Baltimore County Landscape Manual, including all landscaping and/or fencing required for the outdoor sales area(s) as shown on the Site Plan.

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