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| IN RE: PETITIONS FOR SPECIAL HEARING * | BEFORE THE |
| AND VARIANCE | |
| (1323 Greenwood Road) * | OFFICE OF |
| 3 rd Election District | |
| 2 nd Council District * | ADMINISTRATIVE HEARINGS |
| 1323 Greenwood, LLC | |
| <i>Legal Owner</i> * | FOR BALTIMORE COUNTY |
| Peter Garver/Pikesville Self Storage, LLC | |
| | |
| Petitioners * | Case No. 2020-0246-SPHA |
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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 1323 Greenwood, LLC, legal owner and Peter Garver/Pikesville Self Storage, LLC (collectively, the “Petitioners”) for the property located at 1323 Greenwood Road (the “Property”). The Special Hearing was filed to confirm, as valid, variances granted in Case No 1985-0103-A for the existing commercial building which is proposed to remain. Variance relief to permit the following: (1) a front yard setback for proposed self-storage buildings on the parking lot of 11 ft. in lieu of the otherwise required 75 ft. in accordance with the Baltimore County Zoning Regulations (“BCZR”) § 255.2 (which refers to § 243.1); (2) a side yard setback for proposed self-storage buildings on the parking lot of 3 ft. in lieu of the otherwise required 75 ft. per in accordance with BCZR § 255.2 (which refers to § 243.2); (3) a rear yard setback for proposed self-storage buildings on the parking lot of 8 ft. in lieu of the otherwise required 50 ft. in accordance with § BCZR 255.2 (which refers to § 243.3); and (4) a minimum side yard/building to building setback for proposed self-storage buildings of 14.5 ft. in lieu of the otherwise required 100 ft. in accordance with § BCZR 255.2 (which refers to § 243.2).

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. Peter Garver, developer, appeared on behalf of the Petitioners along with Matthew Bishop, professional landscape architect with Kimley-Horn (Pet. Ex. 1) who prepared and sealed a Site Plan to Accompany Variance Petition (the "Site Plan"). (Pet. Ex. 2). Jennifer Busse Esquire and Whiteford, Taylor and Preston represented the Petitioners. The following interested citizens/protestants/community groups testified and asked questions in opposition to the Petitions at the hearing: James Stevens on behalf of Gwynnvale Community Civic Association, Inc.; Eric Levenson; Arlene Rosenberg on behalf of Pikesville Township Association; Debbie Patterson; Elaine Quince; Lauren Esakoff; and Jeffrey Balenson.

Zoning Advisory Committee ("ZAC") comments were received from the Department of Planning ("DOP") which agency did not oppose the requested relief.

FACTS AND EVIDENCE

Petitioners' Case

The first witness to testify for the Petitioners was Matthew Bishop who was accepted as an expert in landscape architecture, in the Baltimore County Code ("BCC") and in the BCZR. (Pet. Ex. 1). Mr. Bishop described the Property as depicted on the Site Plan. (Pet. Ex. 2). It is approximately 6.77 acres and is zoned manufacturing, light (ML). It consists of five (5) parcels and is improved with a commercial building constructed in 1946. It was used by Port City Press for 40 years. The building has 3 sections. The roof of one of those sections is being raised. The Property is also improved with a paved parking lot as well as a storm water management facility, both located on the southern end.

Having obtained a permit, the building is undergoing both interior and exterior renovations which are anticipated to be completed by June of 2021. The building will be used as a self-storage

business with entrance access to the interior using a vehicular ramp located on the south eastern side and an exit access using a separate vehicular ramp on the north eastern side. (Pet. Ex. 2). The ramp access will allow customer vehicles to drive into the building and pull up to their storage units.

Through aerial photographs, Mr. Bishop described the Property as bounded on the north and east by a CSX railroad track, on the north west by Old Court Rd., on the west and southwest by Greenwood Rd., and on the south by Church Lane. (Pet. Ex. 3A). It is an elongated, rectangular shape and closely resembles a boat. (Pet. Ex. 2). The Property is one of several properties zoned for manufacturing (ML and MLR) which parallel the CSX Railroad tracks. Otherwise, the Property is surrounded by residentially zoned properties.

The Petition for Variances does not concern the existing building which will operate as a self-storage business upon completion of the renovations. Architectural elevations of the exterior renovations were provided. (Pet. Ex. 8A, 8B). Rather, the requested Variance relief concerns the existing parking lot on the southern end of the Property. (Pet. Ex.). Mr. Bishop emphasized that, unlike Port City Press which needed both employee and customer parking (Pet. Ex. 4C), the Petitioners do not need a parking lot to park cars. For the 1 or 2 employees who will work in the building, there will be parking spaces provided.

As a result, Petitioners desire to use the parking lot for additional self-storage units. Towards that end, Petitioners need the requested area variances in order to install six (6) single story, storage units on the parking lot. As with the interior of the building, customers will drive through an existing access entrance gate off of Greenwood Rd. and proceed to their outside unit. (Pet. Ex. 3B, 3C, 4D, 6). A metal gate will be installed and connected to the existing fence which fence will remain to enclose the Property. The exact locations of the requested area variances are

circled in red on a redlined copy of the Site Plan. (Pet. Ex. 5). Mr. Bishop explained that two (2) of the requested variances are ‘internal’ variances which means they are procedurally required by the Office of Zoning Review (“OZR”). OZR requires setbacks from internal property lines of the various parcels; the 3 ft. side variance is from the stormwater management facility and the 14.5 ft. is a setback between the existing building and nearest outside storage facility building. (Pet. Ex. 5).

The location and size of each unit is as provided on the Site Plan. (Pet. Ex. 2). An example of the type of the proposed self-storage unit is provided in a photograph. (Pet. Ex. 7). Mr. Bishop testified that the proposed configuration of those outdoor units as shown on the Site Plan is the ideal arrangement of units. As shown on the Site Plan, five (5) of those units will line up in rows, perpendicular to Greenwood Rd.; the sixth (6th) unit will run parallel to the CSX track on the eastern edge of the Property line. Three of the units are double loaded storage units and three (3) are single loaded units. The height of each unit would measure 8 ft. - 9 ft. and the square footage of each is as represented on the Site Plan. (Pet. Ex. 2).

Through a series of street-view photographs, Mr. Bishop opined that the Property has existing, substantial vegetation which he believed, acts as a screen for neighboring homes. (Pet. Ex. 4A, 4B, 4D-4G). On that point, Mr. Bishop prepared a Concept Landscape Plan which depicts (in green) the existing mature tree line and the places where additional vegetation will be planted. (Pet. Ex. 6). Indeed, the Concept Landscape Plan mirrors the existing conditions shown in the street-view photographs. (Pet. Ex. 4A, 4B, 4D-4G).

Protestants Case.

James Steven, 1207 Cobb Rd. Pikesville, an architect, represented the position of Gwynnvale Community Civic Association (“Gwynnvale Association”) which he stated includes

300 citizens. Mr. Stevens testified that, prior to the hearing, he met with Peter Garver and Dr. Harold Hart and told them that Gwynnvale Association is not opposed to the use and renovation of the Port City Press building for self-storage. With regard to the building, Mr. Stevens was clear that the members understand that the ML zoning on the Property permits the Petitioners to develop the Property for manufacturing uses. However, Mr. Stevens confirmed that Gwynnvale Association is opposed to the variances requested for the outside self-storage units on the parking lot. Mr. Stevens explained that a letter dated January 27, 2021 from Gwynnvale Association (signed by Dr. Harold Hart) which expressed support for the exterior self-storage units was sent in error; it does not represent the current position of Gwynnvale Association. (Pet. Ex. 9). As a result, Mr. Stevens provided a letter dated February 2, 2021 (signed by Dr. Harold Hart) disclosing the opposition of Gwynnvale Association. (Prot. Ex. 1).

According to Mr. Stevens, Gwynnvale Association is concerned with the existence of a new business on the parking lot where one did not previously exist. They are equally concerned with the increased traffic which will result from customers accessing those outside units. He emphasized that the parking lot will not be screened from neighboring homes particularly in the Fall and Winter. (Pet. Ex. 4C). The homes on the eastern side of the Property sit at a higher elevation and will look down onto the outside storage units and watch the ensuing activities on the parking lot. (Pet. Ex. 2). He added that the older photograph of the Port City parking lot filled with cars has not been that way for many years. (Pet. Ex. 4C).

Eric Levenson, 401-403 Greenwood Rd. lives across the street from the Property. Mr. Levenson explained that there were originally 2 homes on the parking lot parcel. Mr. Levenson explained that there were numerous problems with Port City Press operation including the traffic it generated. Mr. Levenson agrees with the renovation and use of the building for self-storage.

However, he is opposed to maximizing the area of parking lot to the extent that a variance is needed for the proposed additional storage units. Mr. Bishop responded that outside storage is permitted on the parking lot, and ideally, the Petitioners want the proposed configuration. (Pet. Ex. 2). However, Mr. Bishop added that, if the variances are denied, some outside storage units will be on the parking lot; the issue is the layout of those units. Mr. Levenson highlighted that the present proposal maximizes the outside space for the purpose of economic return.

Arlene Rosenberg, 218 Church Lane testified individually, and on behalf of Pikesville Township Community Association, which represents 4 communities in the surrounding area. Ms. Rosenberg testified that when Port City Press was operating, there were many noise complaints. She confirmed that there was no request to downzone the Property during the CZMP 2020. Ms. Rosenberg questioned the lack of screening for the elevated homes along Church Hill Lane who will look down onto the outside storage, and further questioned the additional lighting spilling into the residential communities. She questioned the total number of storage units that would be on the Property and testified that Pikesville Township Community Association is opposed to the outside storage units.

Debbie Patterson, 1309 Sudvale Rd., Pikesville stated that she is a member of Pikesville Township Community Association. She testified that she is opposed to the outside storage unit configuration as proposed. Ms. Patterson questioned the ability of emergency vehicles to access the inside of the building. She questioned the exterior access gate onto the parking lot. She added that outside storage units are often used to operate businesses of those who rent them. She questioned the various sizes and number of the outside units, and wanted to know what would be stored inside. Ms. Patterson inquired if any additional storm water management is planned, whether the CSX railroad would be impacted and needed to weigh in, and what security measures

would be in place. On the last issue, she noted that crime is already a problem in the area. It was her testimony that if the Petitioners put storage units on the parking lot, they should stay within the legal setbacks.

Elaine Quince, 1326 Church Hill Drive, Pikesville testified that her home backs up to the CSX railroad and therefore overlooks the Property. She confirmed that the existing fence around the Property would remain and was concerned that no additional screening is proposed along the CSX railroad. Ms. Quince testified that security is a main concern because the neighborhood is near a subway station and continuously deals with transients and crime. She implied that outside storage units will bring opportunity for more crime.

Lauren Esakoff, 211 Church Lane testified that she resides in an 1851 stone cottage. She confirmed that the Port City Press operation brought pollution, traffic and noise. She mentioned that, through this community's urgency, the County recently purchased land for a public park on the condition that there would not be lights or basketball courts. In her view, the outside storage units will cause light to spill out onto the neighborhood and will cause traffic issues. She did not object to having self-storage in the existing building. She objects to maximizing the parking lot with storage units, the layout for which has the units on the edges of the Property boundaries. She testified that the outside storage units must be installed within the allowed setbacks.

Jeffrey Balenson, 320 Church Lane testified that his home backs up to the Property. He also advocated that any outside storage must be contained within the legal setbacks. Due to the location of his home, he is concerned about glare from lighting affecting his property, particularly lights on top of the building. He added that the proposed Arborvitae trees to be planted as additional screening, will be eaten by deer which are prevalent in the neighborhood.

In redirect, Mr. Bishop opined that, notwithstanding the concerns of the neighborhood, self-storage use is a permitted use in the ML zone and that, outside storage units will exist on the parking lot in a different layout if the Petition for Variance is denied. It was his opinion that there would be no adverse effects on the neighborhood.

In rebuttal, Peter Garver, 1340 Smith Ave., Suite 200, Baltimore, MD 21209 testified that he has developed one other self-storage facility which is in Baltimore City. He confirmed that the proposed hours of operation at this location will be 6:00 am to 10:00 pm and that there will be no access to storage after 10:00 pm. He stated that the renovation to the building will be completed in June. Mr. Garver testified that the height of the middle portion of the existing building is being raised up 4 ft. because the old walls were falling down and the ceiling was too low. With regard to security, the facility will be operated by Self Storage Plus who will use video cameras.

DECISION

The Petition in this case requests both a Special Hearing to confirm the setback variances granted for the existing building in Case No.: 1985-0103-A, and the setback variances for the outside storage units on the parking lot in accordance with the Site Plan. With regard to the Petition for Special Hearing, the undisputed evidence confirmed that the self-storage business in the existing building is a legally permitted use in an ML zone. The Petitioners have a building permit for the renovations which are anticipated to be finished in June, 2021 and is not requesting any new variances for the existing building. The testimony of concerned neighbors and community groups is that they not only understand that the self-storage business is permitted in the ML zone, but that they are pleased that the previous vacant building is being renovated and will be used. Accordingly, I find the Petition for Special Hearing is within the spirit and intent of the BCZR and should be granted.

With regard to the setback variances requested for the outside storage units in the parking lot, a variance request under BCZR, 307.1, 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). Additionally, BCZR, §307.1 requires that a variance can only be granted if in strict harmony with the spirit and intent of the BCZR height and area regulations, and can be granted in such a manner without causing injury to public health, safety and general welfare.

With regard to uniqueness, the Property was found to be unique in Case No.: 1985-0103-A and that finding is precedent here. The physical features of the Property have not changed; it is still narrow, elongated and shaped like a boat. It is also bound on one side by CSX railroad and on each of the 3 other sides by streets. For all these reasons, I find that the Property is unique.

The second factor to analyze is whether strict compliance with the ML zoning setbacks creates a ‘practical difficulty’ or ‘unreasonable hardship’ for the Petitioners. Under Maryland law, variance relief is properly denied when an owner can make “reasonable use of his property.” *Montgomery Co. v. Rotwein*, 169 Md. App. 716, 733 (2006). The Court of Special Appeals in *Rotwein*, 176 Md. 716, 732-33 (2006) citing *Cromwell*, held that economic loss alone does not satisfy the ‘practical difficulties’ test:

Economic loss alone does not necessarily satisfy the ‘practical difficulties’ test because, as we have previously observed, ‘every person requesting a variance can indicate some economic loss.’ *Cromwell* at 715. Indeed, to grant a variance application any time economic loss is asserted, we have warned, ‘would make a mockery of the zoning program.

Rotwein, 176 Md. 716, 732-33. To prove practical difficulty for an area variance, the Petitioners must produce evidence to allow the following questions to be answered affirmatively:

1. Whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
2. Whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

Applying *Cromwell*, *Rotwein* and *Anderson* here, the testimony confirmed that while the proposed layout set forth in the Site Plan is the ideal configuration of the outside storage units because it maximizes the space and therefore the return on investment, the Petitioners are not precluded from constructing outside storage on the parking lot. Indeed, the Petitioners would simply need to reconfigure the units to stay within the required setbacks. Thus, the reason for the reduced setbacks from the required 50, 75 or 100 ft. setbacks is to maximize the number and size of the units within the space.

I find based on the evidence, that the Petitioners will not suffer a practical difficulty or unreasonable hardship if the variances are denied. Indeed, the Petitions will not only operate a self-storage business in the building, but can use the parking lot for outside storage while staying within the legal setbacks. As highlighted by the Protestants, the proposed configuration of units is the Petitioners' ideal layout to maximize the number and size of the units. I find that the Petitioners will not be denied reasonable use of the parking lot without the ideal configuration of the outside storage units because, as Mr. Bishop indicated, units can still be placed on the parking lot without

requesting a variance of the setbacks. Thus, the facts support the position that the Petitioners can still make reasonable use of the parking lot.

In addition, I find that the testimony of the Protestants to be relevant and convincing that granting the setback variances for the outside storage units in this case would be injurious to the health, safety and welfare of the surrounding homes. The homes along Church Hill Drive would have a direct and unobstructed view of 6 outside storage units of varying length and sizes with very little setbacks from the Property line or the building. When the Port City Press was operating, there was no active business being conducted in the parking lot; only parked cars. At the same time, I find that the Protestants willingness to welcome the self-storage business in the building (which is permitted by right), and their appreciation for the renovations to a building that had remained vacant for 2 years, to be evidence of their reasoned and informed position in this case. Accordingly, the setback variances for the outside storage units will be denied.

THEREFORE, IT IS ORDERED this 16th day of **February 2021**, by this Administrative Law Judge that the Petition for Special Hearing filed to confirm variances granted in Case No 1985-0103-A as valid for existing building which is to remain is hereby **GRANTED**; and it is,

FURTHER ORDERED that the requested Variance relief for the following: (1) a front yard setback for proposed self-storage buildings on the parking lot of 11 ft. in lieu of the otherwise required 75 ft. in accordance with the Baltimore County Zoning Regulations (“BCZR”) § 255.2 (which refers to § 243.1); (2) a side yard setback for proposed self-storage buildings on the parking lot of 3 ft. in lieu of the otherwise required 75 ft. per in accordance with BCZR § 255.2 (which refers to § 243.2); (3) a rear yard setback for proposed self-storage buildings on the parking lot of 8 ft. in lieu of the otherwise required 50 ft. in accordance with § BCZR 255.2 (which refers to § 243.3); and (4) a minimum side yard building to building setback for proposed self-storage

buildings of 14.5 ft. in lieu of the otherwise required 100 ft. in accordance with § BCZR 255.2 (which refers to § 243.2), are 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