

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(4701 Wilkens Avenue)		
1 st Election District	*	OFFICE OF
1 st Council District		
	*	ADMINISTRATIVE HEARINGS
Maryland CVS Pharmacy LLC		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No. 2021-0090-SPH
* * * * *		

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petition for Special Hearing filed on behalf of Maryland CVS Pharmacy, LLC (the “Petitioner”) for the property located at 4701 Wilkens Avenue (the “Property”). The Special Hearing was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) §500.7 for permission to install a directional sign for an adjacent apartment complex beneath an existing CVS sign.

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 Grose from Maryland CVS Pharmacy, LLC appeared at the hearing along with Edward Gilliss, Esquire of Royston, Mueller, McLean & Reid, LLP who represented the Petitioner. There were no Protestants or interested citizens in attendance at the hearing.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and Department of Environmental Protection & Sustainability (“DEPS”) which agencies did not oppose the relief.

The case proceeded by way of proffer by Mr. Gilliss. The Property is 2.127 acres +/- (92,664 sf) located at the corner of Wilkens Avenue and Maiden Choice Lane in Catonsville. It is zoned Business, Local (BL) and is improved with a CVS Pharmacy and associated parking lot. Adjacent

to the Property are the Westland Garden Apartments and Townhouses (“Westland Gardens”). Mr. Gillis explained that, until October 12, 2018, both the Property and Westland Gardens were owned in fee by The Westland Gardens Company. The Property was sold to the Petitioner on the condition that The Westland Gardens Company retain an easement on the Property to install a directional sign for the benefit of Westland Gardens. Toward that end, a Sign Easement Agreement was executed between the parties and recorded in the Land Records of Baltimore County on October 18, 2018 (Book: 40793; Page 34). (Pet. Ex. 1).

Mr. Gilliss also explained that on or around July 29, 2019, CVS applied for a permit to install a new sign at the location as depicted on a site plan and as shown in the street view photographs. (Pet. Exs. 2, 2A, 4, 5). On the sign beneath the CVS panel is a blank panel for the Westland Gardens sign. (Pet. Ex. 3). However, Baltimore County did not approve the Westland Gardens sign.

SPECIAL HEARING

A hearing to request special zoning relief is proper under BCZR, §500.7 as follows:

The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

"A request for special hearing is, in legal effect, a request for a declaratory judgment." *Antwerpen v. Baltimore County*, 163 Md. App. 194, 877 A.2d 1166, 1175 (2005). Based on the evidence, I find that the Special Hearing relief to permit the directional sign for Westland Gardens beneath

the sign panel for CVS as depicted in the photographs presented should be granted. I find that the long-standing installation of the sign advertising Westland Gardens and the continued property interest of The Westland Gardens Company in both the Property and the adjacent Westland Gardens property as recorded in the Sign Easement Agreement is a necessary tool to direct people and traffic to Westland Gardens. I also find that the requested Special Hearing relief can be granted within strict harmony with the spirit and intent of the BCZR, and particularly the Sign Regulations, without injury to the health, safety or general welfare, particularly in light of the lack of opposition.

THEREFORE, IT IS ORDERED this 1st day of **June 2021**, by this Administrative Law Judge that the Petition for Special Hearing from BCZR §500.7 to install a "Westland Gardens directional Sign" as depicted in the photographs presented Petitioner's Exhibits 3, 4 and 5 is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner 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, 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 _____
MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm