

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(8649 Oakleigh Road)	*	OFFICE OF
9 th Election District		
5th Council District	*	ADMINISTRATIVE HEARINGS
Oakleigh Road, LLC		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No. 2021-0040-SPHA
* * * * *		

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 Oakleigh Road, LLC, legal owner (“Petitioner”) for the property located at 8649 Oakleigh Rd., Parkville. The Special Hearing Petitions were filed pursuant to the following Baltimore County Zoning Regulations (“BCZR”) for the relief from:

- (1) §4A02.4.G to permit the proposed nonindustrial development where it has been determined that the demand or impact of the development proposed will be less than that assumed by the district standard that would otherwise restrict or prohibit the development, or that the standard is not relevant to the development proposal.
- (2) §409.8.B. to permit business parking in a residential zone.
- (3) §104.1 to approve a nonconforming lot width and lot area of the property.
- (4) §104.1 to approve a nonconforming dwelling front yard setback, side yard setback, and sum of the side yard setback.
- (5) §409.12 to permit a modified parking plan to allow parking spaces as shown on the plan.
- (6) §1B01.1.B.1.g(17) to allow business parking in a residential zone in a Commercial Revitalization District within the Residential Transition Area (“RTA”).

Variance relief was also filed from BCZR:

(1) §409.8.A.1, if necessary, to permit a perimeter screening of 8.5 ft. in lieu of the required 15 ft. (Landscape Manual Condition B: Parking Lots).

(2) §1B01.1.e.(5) to allow a parking RTA buffer and tract boundary setback of 8.5 ft. in lieu of the required 50 ft. and 75 ft. respectively.

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. Calvin Raver, a member of the Petitioner, appeared at the hearing along with Andrew Stine, landscape architect with Development Design Consultants who prepared and sealed a site plan (the “Site Plan”). (Pet. Ex. 1). Lawrence E. Schmidt, Esquire and Smith, Gildea and Schmidt, LLC represented the Petitioner. Oakleigh Manor Civic Association (the “Civic Association”) appeared in opposition.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) which agency did not oppose the relief. The Department of Public Works (“DPW”) also provided a comment opposing the requested relief due to a concern about a riverine flood plain on the Property.

The case proceeded by way of modified proffer by Mr. Schmidt. Andrew Stine, RLA, ASLA was accepted as an expert in landscape architecture. (Pet. Ex. 5). The Property is 0.343 acres (14,946 sf) and is improved with a 1927 single family home. (Pet. Ex. 6E). It is zoned Density Residential (DR1) and shares its northern property line boundary with a commercial property where Towson Mechanical operates its business at 8651 Oakleigh Rd. (the “Towson Mechanical Property”). (Pet. Exs. 1, 6D, 6G, 6H). As aerial photograph accurately depicts the neighborhood. (Pet. Ex. 2A-2C).

In 1997, the County designated the area west of Loch Raven Blvd., Joppa Rd. and Perring Pkwy. as a Commercial Revitalization District (“CRD”). (See Master Plan 2020, pp. 137 – 141).

Significantly, both 8649 and 8651 Oakleigh Rd. are included within the CRD. (Pet. Ex. 1). The Petitioner owns both 8649 and 8651 Oakleigh Rd.

Towson Mechanical has been operating in Baltimore County for 40 years. The Towson Mechanical Property is improved with an existing office building and paved parking lot. (Pet. Exs. 1, 6D, 6G-H, 6M-N). It is zoned Business, Local - Restricted (BLR). The home at 8649 is rented and sits close to Oakleigh Rd. with the majority of the Property being the rear yard. A white privacy fence is located along the side (southern) yard and rear (eastern) yard. (Pet. Ex. 6F, 6I, 6J). Fence posts were erected along the northern boundary line but fence rails were not installed. (Pet. Ex. 6F, 6G, 6H). Adjacent to the eastern boundary is a channel which can fill with water after rain events.

Mr. Raver testified that when he purchased the Towson Mechanical Property in 2009, he designed the building to maximize its parking lot (the "Towson Mechanical Parking Lot"). He also installed storm water management facilities, forest buffers, and landscaping. However, due to the success of the Towson Mechanical business, the Towson Mechanical Parking Lot cannot accommodate its parking needs. As such, Petitioner desires to use the rear yard of the Property for overflow parking (the "8649 Parking Lot"). Mr. Raver explained that he sought permission to use the commercial parking lot directly across Oakleigh Rd. which currently has a car dealership/automotive service business. Unfortunately, the owner of that property would not agree.

Mr. Raver proposes that the hours during which vehicles would be parked on the 8649 Parking Lot would mirror the hours of operation for Towson Mechanical business (i.e. Monday – Friday, 6:00 am to 6:00 pm; no parking on Saturdays or Sundays). Mr. Raver has permitted a neighboring church to allow its attendees to park in the Towson Mechanical Parking Lot on Sundays and on other religious observance days. Mr. Raver clarified that no lighting would be erected on the 8649 Parking

Lot. He also made clear there would be no loading or unloading of trucks or other vehicles there. Mr. Raver added that all deliveries are sent directly to the job site.

Mr. Stine testified that the proposed parking lot would have 13 spaces and would be accessed by way of the paved driveway which runs along the side and rear of the Towson Mechanical Property. (Pet. Ex. 6K). Mr. Stine explained that the proposed 8649 Parking Lot, as shown on the Site Plan, meets the drive aisles requirements. (Pet. Ex. 1). Each parking space is 9 ft. wide and 18 ft. deep. (*Id.*). As proposed, vehicles using the 8649 Parking Lot will have space to maneuver. The parking surface will be durable and dustless and if required, pervious material can be used. Mr. Stine added that on the eastern end of the 8649 Parking Lot is a grass area which will act to filter any water run-off. Mr. Stine testified that there is no requirement to install storm water management facilities where the area is less than 5000 sf.

With regard to the BCZR, §502.1 Special Exception factors, Mr. Stine offered that the proposed parking is a minor request which will not affect the health, safety or general welfare of the area. The request is for 13 parking spaces to be used by Towson Mechanical during business hours. As such, it was his opinion that the proposed use will reduce traffic and congestion of vehicles parking on the side of Oakleigh Rd. It will not bring any more people to the area than already come, it will not cause fire, panic or other danger and it will not interfere with light or air as the use does not cast shadows. He added that this use will not cause any interference with public improvements and is consistent with the BCZR because a use permit for commercial parking in a residential zone is expressly permitted under BCZR, §409.8. Mr. Stine added that the proposed parking will not be inconsistent with impermeable surface and vegetative retention provisions particularly in light of the use of permeable parking surface, if necessary.

Lastly, Mr. Stine opined that the use will not be detrimental to the intermittent water channel which runs adjacent to the eastern boundary of the Property as there is a grass area which will intercept any water runoff. Mr. Stine clarified that the County has not classified the water channel as a stream. Indeed, he identified it as an “Ephemeral Channel” on the Site Plan because it is not an active stream but rather accumulates water during rain events. The DPW ZAC Comment initially objected to the Petitions finding that this channel was a ‘drainage course that appears to meet Baltimore County regulations for a flood plain.’ In order to verify the ultimate conditions, the DPW ZAC Comment requested a flood study to verify the flood plain boundary.

In response, a letter was submitted to DPW by a professional engineer at Development Design Consultants which states that, while the Property does lie within the FEMA designated Unshaded Zone X, FEMA notes that that Zone does not typically rise beyond ponding, and does not warrant detailed flood studies. (Pet. Ex. 4C). Additionally, the professional engineer emphasized that Baltimore County does not require detailed flood studies in cases where the contributing drainage areas do not exceed 30 acres. (*Id.*). He highlighted that the drainage area here is only 18.6 acres. (*Id.*). Upon receipt of this information, DPW, through Terry Curtis, Engineer III, acknowledged, via email, that Baltimore County regulates flood plains in consisting of 30 acres or more. (Pet. Ex. 4B). Mr. Curtis responded that he had conducted ‘a quick drainage area determination.’ As a result, Mr. Curtis accepted the professional engineer’s calculation of 18 acres. A sealed letter from the professional engineer was provided. (Pet. Ex. 4C).

Testifying on behalf of the Civic Association were Karen Boecker, Secretary and Karina Wittstadt, President who were also permitted to ask questions of the Petitioners’ witnesses. The Civic Association is comprised of 60 members, the boundaries of which include Quentin Avenue, Oakleigh

Rd., Joppa Rd. and Putty Hill Avenue. Both Ms. Boecker and Wittstadt submitted written statements opposing the Petition which are contained in the file.

Ms. Boecker, who resides in the neighborhood at 8604 Quentin Avenue, testified that water backs up in the channel onto the properties south of the Property causing flooding problems. She testified that asphalt will increase water runoff into the channel which will exacerbate the back up onto properties to the south. She indicated that the County will not maintained or rectified the problem. Ms. Boecker believes that the Petitioner should share the commercial parking lot across Oakleigh Rd. Upon cross examination by Mr. Schmidt, Ms. Boecker clarified that no study of water drainage has been conducted by the Civic Association. In her written statement, Ms. Boecker objected to the Petitioner's request to rezone the Property from residential to commercial. She explained that a group of investors has been purchasing properties in the area in an attempt to change its residential zoning.

Ms. Wittstadt resides at 1806 Trenleigh Rd. and testified that the water channel floods when it rains. The Civic Association requested maintenance and repairs of the water channel and erosion but was told that the project was not big enough for the County to remedy. Ms. Wittstadt echoed the suggestion for the Petitioner to share the private commercial parking lot across Oakleigh Rd.

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 the following with regard to Special Hearing requested:

First, Petitioner sought relief under BCZR, §4A02.4.G to permit the proposed nonindustrial development where it has been determined that the demand or impact of the development proposed will be less than that assumed by the district standard that would otherwise restrict or prohibit the development, or that the standard is not relevant to the development proposal. The nonindustrial development refers to the proposed parking lot, and the relief was requested due to the failing traffic intersection at Joppa Rd. and Loch Raven Blvd. as reflected on the Basic Services Transportation Map referenced in BCZR, §4A02.4.D. However, because the Property is within the CRD, BCZR, §4A02.4.E provides an exception from the Basic Services Map Transportation Standards in BCZR, §4A02.4.D. As a result of this exception, I find there is no need for a special variance under BCZR, §4A02.4.G, as the Basic Services Map Transportation Standards do not apply here and therefore Special Hearing No. 1 is moot.

Second, Petitioner sought a use permit under BCZR, §409.8.B for business parking in a residential zone. However, since the Property is in a CRD, BCZR, §409.8.B.3 provides an exception wherein a use permit is not required, because business parking in a residential zone is permitted *by right* (if there is an existing parking facility). As applied here, the existing parking facility is the Towson Mechanical Parking Lot. It would be illogical for the 'existing parking facility' to be located in the residential property where the parking is requested, particularly given the requirement in BCZR, §409.8.B.2.a that the proposed residential land must adjoin (or be across an alley or street from) the business. Said another way, there would be no need to request parking

in the residential zone if a parking facility already existed in the residential zone. As such, I find that the Petitioner, as the owner of 8649 and 8651 Oakleigh Rd., has the right to use 8649 Oakleigh Rd. for commercial parking for Towson Mechanical's business, and the relief requested Special Hearing No. 2 is not needed. Therefore, Special Hearing No. 2 for a use permit is moot.

In the event that an appellate court would decide that BCZR, §409.8.B.3 does not provide this use by right, I find that the evidence supports the conclusion that the proposed use will not negatively impact the surrounding community under BCZR, §409.8.B.1.e(1)-(4). The testimony of Mr. Stine was persuasive that the proposed use meets each of the Special Exception factors under BCZR, §502.1 as set forth above which evidence I incorporate into my finding. Petitioner is agreeable to using pervious material for the parking surface to minimize impact to the water channel. I am sympathetic to the concerns of the Civic Association in regard to the drainage problem on properties to the south of this Property. However, there was no evidence to support the conclusion that the proposed pervious parking area will exacerbate that issue. Mr. Raver has not had flooding problems on either 8649 or 8651 Oakleigh Rd.

The evidence revealed that the requirements under BCZR, §409.8.B.2.a-f have also been met. Specifically, the Property adjoins the Towson Mechanical Property. Mr. Raver testified that only passenger vehicles (no buses) will park on the 8649 Parking Lot, there will not be any loading, service or use of that lot other than parking, and there will not be any lighting erected. The Petitioner produced a Site Plan detailing that access to the proposed parking area will be through the Towson Mechanical Property. Mr. Raver made clear that parking will only occur Monday-Friday between the hours of 6:00 am to 6:00 pm. Maintenance will be provided by the Petitioner who owns both properties.

Third, Special Hearing No. 3 and 4 is to approve nonconforming areas and setbacks because the existing home on the Property (which will remain) was built in 1927, prior to the enactment of the BCZR. As such, it does not meet required areas and setbacks. Upon improvement of the Property with the proposed parking lot, Petitioner seeks to ensure that the existing area and setbacks for that home and rear yard are permitted as ‘grandfathered.’ I agree with the DOP Comment characterizing these requests as ‘clean-up’ items and find that both should be granted. The Petitioner is not expanding or improving the home or fence which exists.

Fourth, the Petitioner seeks a modified parking plan under BCZR, §409.12 in order to meet the Design Standards under BCZR, §409.8.A, and specifically, in order to permit a perimeter screening of 8.5 ft. in lieu of the required 15 ft. as required by Landscape Manual Condition B: Parking Lots. This relief was also requested, in the alternative, as a Petition for Variance No. 1. In this case, there is a white privacy screen which functions as a perimeter screening of the commercial parking lot from the surrounding homes. It is notable to me that none of the surrounding property owners appeared in opposition to the requested Petitions here and that the proposed parking area meets all the setbacks of the BCZR. Given the restricted use, limited parking hours and prohibition on loading and unloading in the 8649 Parking Lot, I find the Petitioner would suffer an undue hardship if the request for a modified parking plan is not granted. As such, Special Hearing No. 5 will be granted and Variance Request No. 1 is moot.

Lastly, Special Hearing Request No. 6 seeks approval of an exception to the Residential Transition Area (“RTA”) buffer and setback requirements for business parking in a residential zone in a CRD pursuant to BCZR, §1B01.1.B.1.g(17). In the alternative, if the RTA restrictions apply, Petitioner also sought Variance relief (No. 2) to allow a parking RTA buffer and tract boundary setback of 8.5 ft. in lieu of the required 50 ft. and 75 ft. respectively. Based on the

express language of the RTA exception in g(17), it is clear that the RTA does not apply because the Property is located in a CRD. Accordingly, Special Hearing No. 6 will be granted and Variance No. 2 is moot.

THEREFORE, IT IS ORDERED this 10th day of **May 2021**, by this Administrative Law Judge that the Petition for Special Hearing pursuant to the Baltimore County Zoning Regulations (“BCZR”) for the relief from:

(1) §4A02.4.G to permit the proposed nonindustrial development where it has been determined that the demand or impact of the development proposed will be less than that assumed by the district standard that would otherwise restrict or prohibit the development, or that the standard is not relevant to the development proposal be, and it is hereby, **MOOT**.

(2) §409.8.B. to permit business parking in a residential Zone, be, and it is hereby, **MOOT**.

(3) §104.1 to approve a nonconforming lot width and lot area of the property be, and it is hereby, **GRANTED**.

(4) §104.1 to approve a nonconforming dwelling front yard setback, side yard setback, and sum of the side yard setback be, and it is hereby, **GRANTED**.

(5) §409.12 to permit a modified parking plan to allow parking spaces as shown on the plan be, and it is hereby, **GRANTED**.

(6) §1B01.1.B.1.g(17) to allow business parking in a residential zone in a Commercial Revitalization District within the Residential Transition Area (“RTA”) be, and it is hereby, **GRANTED**.

Variance relief from BCZR:

(1) §409.8.A.1, if necessary, to permit a perimeter screening of 8.5 ft. in lieu of the required 15 ft. (Landscape Manual Condition B: Parking Lots) be, and it is hereby, **MOOT**.

(2) §1B01.1.e.(5) to allow a parking RTA buffer and tract boundary setback of 8.5 ft. in lieu of the required 50 ft. and 75 ft. respectively be, and it is hereby, **MOOT**.

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 is 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.
2. The 8649 Parking Lot shall only be used by Towson Mechanical for its business as conducted at 8651 Oakleigh Rd., for passenger vehicles only (excluding buses), shall be limited to Monday – Friday from 6:00 am to 6:00 pm (no Saturdays, Sundays or official calendar holidays). There shall be no loading, unloading, service or other use other than parking as set forth herein. The 8649 Parking Lot shall not be used by any church or other group or any other person for any reason. Because the 8649 Parking Lot is dependent upon the existing parking facility on the Towson Mechanical Property, upon termination or closure of the Towson Mechanical business, the 8649 Parking Lot shall be removed and the rear yard of the Property restored to the pre-Petition condition.
3. There shall be no lighting erected or used at the 8649 Parking Lot.
4. Petitioner shall be responsible, at its sole cost and expense, for maintenance of the 8649 Parking Lot including mowing of grass.
5. Petitioner shall only install a durable, dustless and permeable parking surface in order that all water drains shall be below the parking surface and/or into the grass area of the rear yard.

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



MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm