

IN RE: PETITIONS FOR SPECIAL	*	BEFORE THE
EXCEPTION AND VARIANCE	*	OFFICE OF
(7 Deneison Avenue)	*	ADMINISTRATIVE HEARINGS
8th Election District	*	FOR BALTIMORE COUNTY
3 rd Council District	*	
Stokes Real Estate, LLC	*	
<i>Legal Owner</i>	*	
Patrick Richardson, Jr.	*	Case No: 2020-0153-XA
<i>Contract Purchaser/Lessee</i>	*	
Petitioners	*	

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 7 Deneison Avenue. The Petitions were filed on behalf of Stokes Real Estate, LLC, legal owner and Patrick Richardson, Jr., contract purchaser/lessee of the subject property (“Petitioners”). The Special Exception petition seeks relief from §§ 202.3.A.1 and 1B01.1.1.C4 of the Baltimore County Zoning Regulations (“BCZR”), to allow a community building at the site and per § 202.3.B to permit a second floor to be constructed on the house for a residence since the use of the property is going to be other than a Class A Office Building. The Petition for Variance seeks relief from §§ 202.4A and 1B01.1.B.1 of the BCZR to allow a RTA buffer of 10’ in lieu of the required 50’, and a setback of 35’ in lieu of the required 75’ for parking.

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. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1. Patrick (Rick) C. Richardson, Jr. appeared in support of the petitions. There were no protestants in attendance.

Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) dated August 27, 2020. They did not oppose the requested relief, subject to proposed conditions, which will be incorporated into the Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The subject property is located in Lutherville and is zoned ROA. Mr. Richardson explained that the property has been used as a financial services office since 2006. He has contracted to purchase the property to use as his engineering office in the basement, and for his daughter to use as a dance studio and healing arts center on the first floor. He further explained that depending on the success of his daughter’s business ventures they may want to construct a second floor addition to house a yoga studio and living quarters for his daughter. Richardson asked that the special exception for the second story addition be extended from two to five years in order to accommodate the prevailing economic uncertainties.

SPECIAL EXCEPTION

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. *Schultz v. Pritts*, 291 Md. 1 (1981). The *Schultz* standard was revisited in *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use.

Based on the record evidence in this case I find that the special exception request to use this property as a community use building for civic, social, recreational or educational purposes

should be granted. Specifically, I find that the proposed uses will not have any greater impacts at this location than those inherently associated with the special exception use.

VARIANCE

Under BCZR Sec. 307, and Maryland common law, in order to be entitled to variance relief the Petitioners must satisfy a two-step legal analysis, 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 is what necessitates the requested 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 in this case is unique in that it has an existing parking lot and other natural features that necessitate the variance relief requested. As Mr. Richardson explained, the property is well shielded by shrubbery and existing fencing. I therefore find that the variance relief requested can be granted within the spirit and intent of the BCZR and without harming the public health, safety, or welfare. Further, the requested relief is not opposed by the DOP.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this day **10th** of **November, 2020** that the Petition for Special Exception pursuant to §§ 202.3.A.1 and 1B01.1.1.C4 of the BCZR, to allow a community building at the site and per § 202.3.B to permit a second floor to be constructed on the house for a residence, since the use of the property is going to be other than a Class A Building be and are hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance from §§ 202.4A and 1B01.1.B.1 of the BCZR to allow a RTA buffer of 10' in lieu of the required 50', and a setback of 35' in lieu of the required 75' from parking are hereby GRANTED .

The relief granted herein shall be subject to the following:

- Petitioner 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 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, Petitioners would be required to return the subject property to its original condition.
- Prior to issuance of permits, Petitioner must comply with the ZAC comments made by the DOP, a copy of which is attached hereto and made a part hereof.
- The Special Exception relief permitting construction of a second floor shall be valid for five (5) years from the date of this Order.

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

Signed _____
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/dlm