

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(11606 Eastern Boulevard) *	OFFICE OF
15th Election District *	ADMINISTRATIVE HEARINGS
6th Council District *	
G4 Enterprise, LLC *	FOR BALTIMORE COUNTY
<i>Legal Owner</i> *	
Petitioner *	Case No. 2021-0149-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 G4 Enterprises, LLC, (“Petitioner”) for the property located at 11606 Eastern Ave., Middle River (the “Property”). The Special Hearing was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) §409.12 to permit a modified parking plan and to approve non-conforming improvements (buildings) as located on the Property and shown on the site plan. In addition, Variance relief was requested from: (1) BCZR, §255.2 to permit an existing 1 story office building with a proposed 2 story addition with a side yard setback of 5 feet in lieu of the required 50 ft. and to permit an existing office storage building with a side yard setback of 4 ft. in lieu of the required 50 ft.; (2) BCZR, § 255.1 to permit a proposed side/rear setback for a building addition of 10 ft. in lieu of the required 30 ft., and to permit an existing building with a side/rear yard setback of 25 ft. in lieu of the required 30 ft.; and (3) As an alternative to the Special Hearing relief from BCZR, §409.8, to permit a parking lot with spaces not being striped, a surface not durable and dustless and not meeting landscaping requirements.

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. Mark Goloboski, member

of the Petitioner and owner of Bay Country Concrete appeared in support of the Petition along with Brian Dietz of Dietz Surveying who prepared a site plan (the "Site Plan"). (Pet. Ex. 1). Lawrence Schmidt, Esquire of Smith, Gildea & Schmidt, LLC represented the Petitioner. Neighboring property owner, Joe Johnson, 11650 Eastern Ave., Middle River attended the hearing and asked questions.

Zoning Advisory Committee ("ZAC") comments were received from the Department of Planning ("DOP"), Department of Environmental Protection and Sustainability ("DEPS"), Baltimore County Fire Department ("BFD") and from State Highway Administration ("SHA") which agencies did not oppose the requested relief.

The case proceeded by way of proffer by Mr. Schmidt. Brian Dietz, registered property line surveyor was accepted as an expert in surveying. (Pet. Ex. 6). The Property is 5 acres +/- and is zoned Business-Roadside, Manufacturing-Light, Industrial-Major (BR, ML-IM). Brian Dietz added that the building on the Property are 30-40 years old and the Property has always been used for industrial purposes.

Mr. Schmidt narrated through a series of aerial and street view photographs showing the existing industrial buildings and vehicles parked on the Property. The aerial photographs show that the Property is oddly shaped in the form of a triangle, with the rear end abutting an active railroad line, and the front end facing Eastern Ave. (Pet. Ex. 3A, 3B). The street view photographs reveal a paved driveway entrance leading back to four (4) pre-fabricated buildings, 2 of which are used for offices and 2 of which are used for storage. (Pet. Exs. 1, 4A-4R). In addition, there is an existing warehouse with a rounded roof in the middle but closer to the rear of the Property. (Pet. Ex. 1).

Mr. Schmidt explained that the Petitioner is proposing to build additions onto two (2) of the buildings. On the eastern side of the Property, there will be a 2-story addition (5,000 sf) built onto a one-story (5,000 sf) office building (“Eastern Addition”). The Eastern Addition will only be 10 ft. from the eastern Property line whereas the 1-story existing office building will remain at 29.7 ft. from the eastern Property boundary.

On the western side there will be another 2-story addition to an existing 1-story office building (“Western Addition”). The Western Addition will only be 5 ft. from the western Property line and the existing office building there will be 4 ft. from western Property boundary. The adjacent property on the western boundary is owned by Baltimore County.

Additionally, there is a smaller 2-story building on the northern side of the Property located on an elevated mound which building will eventually be removed. (Pet. Ex. 4M). There will be no change to existing warehouse on the north side (Pet. Ex. 4K, 4N), or the storage building on the north-western side of the Property. (Pet. Ex. 4J). The existing parking area is crush and run which cannot be striped and does not have landscaping. (Pet. Ex. 4O, 4P).

Mr. Goloboski testified that Bay Country Concrete is in the commercial concrete business throughout Mid-Atlantic/Del-Marva area. The Property will be used for Bay Country Concrete’s corporate offices and equipment/material storage yard – both of which are permitted in the ML-IM zone. The Property will not be used as a manufacturing plant. Manufacturing of concrete is conducted at the job-site. Photographs of typical jobs for Bay Country Concrete were provided. (Pet. Exs. 5A-5J). By way of example, Bay Country Concrete worked on the foundation for Towson Town Mall. Typically, the foreman for the job site will come to the Property to pick up information and/or material and the laborers report to the job site. The office buildings will have 10-15 people who handle billing, job orders and estimating.

Neighboring property owner Joe Johnson testified that he had purchased the adjacent property on the Eastern side and plans to move his business there. Mr. Johnson is in the business of marine parts and accessories which entails a shipping and receiving business. Mr. Johnson asked why the proposed Eastern Addition will only be 10 ft. from his property line. Mr. Golobowski stated the reason is to use the existing parking area in front of the existing office building.

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 unique due to its peculiar shape which is narrow along Eastern Avenue but wider towards the northern, rear property line. It's location between an active railroad line and property owned by Baltimore County. I find that the Petitioner would suffer a practical difficulty and unreasonable hardship if the proposed setbacks were not granted because Variance Nos. 2 and 4 simply confirm existing setbacks for buildings which are 30-40 years old. In addition, the setback relief for the 2 proposed additions are necessitated by the established location of the existing older buildings. Thus, the 10 ft. setback for the Eastern Addition is driven by the need to leave in place the existing crush and run parking area which is located on front and on the side of the proposed Eastern Addition. Without the variance relief, the Petitioner would not be able to construct the Eastern Addition which is needed for office space. Similarly, the Western Addition is to be built onto the existing 1-story office building which is already 5 ft. from the western boundary. This Property has always been used as industrial and the Petitioner will continue to use

it as industrial. As such, I find the existing crush and run parking area functions well for this industrial site. Landscaping of this gravel parking area is neither needed nor practical; it would be unduly burdensome to maintain a landscaped parking area given the nature of this business. I also find that the requested variance relief can be granted in strict harmony with the spirit and intent of the BCZR and without injury to the health, safety or general welfare.

THEREFORE, IT IS ORDERED this 22nd day of **July 2021**, by this Administrative Law Judge that the Petition for Special Hearing from BCZR § 409.12 to permit a modified parking plan and to approve non-conforming improvements (buildings) as located on the property and shown on the site plan is **MOOT** as duplicative of the Variance relief below.

IT IS FURTHER ORDERED that the Variance relief from: (1) BCZR, §255.2 to permit an existing 1 story office building with a proposed 2 story addition with a side yard setback of 5 feet in lieu of the required 50 ft. and to permit an existing office storage building with a side yard setback of 4 ft. in lieu of the required 50 ft.; (2) BCZR, § 255.1 to permit a proposed side/rear setback for a building addition of 10 ft. in lieu of the required 30 ft., and to permit an existing building with a side/rear yard setback of 25 ft. in lieu of the required 30 ft.; and (3) As an alternative to the Special Hearing relief from BCZR, §409.8, to permit a parking lot with spaces not being striped, a surface not durable and dustless and not meeting landscaping requirements, be and they are each 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 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. Petitioner and all subsequent owners must comply with the DEPS and BCFD comments, copies of which are attached hereto and made a part hereof.

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

Signed
MAUREEN E. MUPRHY
Administrative Law Judge
for Baltimore County

MEM/dlm