

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(1800 1810 York Road) *	OFFICE OF
8 th Election District *	
3rd Council District *	ADMINISTRATIVE HEARINGS
Yorkridge Shopping Center, LLC *	
<i>Legal Owner</i> *	FOR BALTIMORE COUNTY
Petitioner *	Case No. 2021-0219-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 Yorkridge Shopping Center, LLC, legal owner (“Petitioner”) for the property located at 1800-1810 York Road, 2-50 West Ridgely Rd. (the “Property”). The Special Hearing Petition was filed pursuant to Baltimore County Zoning Regulations (“BCZR”), §500.7 to amend the Order and site plan approved in Zoning Case No. 2013-0104-SPHA. Variance relief was also sought from BCZR, §409.6.A.2 to allow a total of 844 off-street parking spaces in lieu of the required 1,179 parking spaces.

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 Renbaum, representative for Petitioner appeared at the hearing along with Joshua Sharon, PE of Morris & Ritchie Associates who prepared a site plan (the “Site Plan”). (Pet. Ex. 2). David Karceski, Esquire, Katlynn Peach, Esquire and Venable, LLP represented the Petitioner. Ciro Scotto Di Santolo, a representative of THB Bagelry and Deli of Timonium, which is a tenant in Yorkridge Shopping Center, was also present. There were no Protestants or interested citizens in the hearing.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and Department of Environmental Protection and Sustainability (“DEPS”)

which agencies did not oppose the relief. Department of Public Works & Transportation (“DPWT”) provided a comment which indicated that the agency opposed business parking in a residential zone.

The case proceeded by way of modified proffer by Mr. Karceski. Joshua Sharon, PE was accepted as an expert in civil engineering. (Pet. Ex. 1). Gordon Godat, AIA, LEED-AP was accepted as an expert in the field of architecture. (Pet. Ex. 5). Wes Guckert of The Traffic Group, was accepted as an expert in the field of transportation planning. (Pet. Ex. 8).

Yorkridge Shopping Center is located on the corner of York Rd. and Ridgely Rd. It is a total of 15.8543 acres +/- consisting of two (2) parcels: the shopping center (Parcel 8; 15.416 acres+/-; Tax Id: 08-25-045300); and the Shell Gas station (Parcel 750; 0.4383 acres+/-; Tax Id: 08-19-035720). (See SDAT info). (Pet. Ex. 2). In response to an Office of Zoning Review (“OZR”) comment that these Parcels were under separate ownership, Mr. Renbaum explained that, notwithstanding the names on the SDAT tax accounts, the Petitioner owns both parcels in accordance with the recorded deed(s) for the Property. Mr. Renbaum noted that Shell Oil Co. of New York, the entity listed as the owner for Parcel 750 had been the original tenant for the Shell Gas station going back to 1962. For ease of paying the tax bill at that time, the tax bill was sent to Shell Oil Co. of New York’s real estate department. Since 1962, the tenant operating the Shell Gas Station has changed and is presently SMO Motor Fuels located in La Plata, MD. However, the owner’s name on the tax account had never been changed.

The Property is split-zoned Business, Local, Commercial Community Core (BL-CCC); BL; and Manufacturing Light, Industrial, Major (ML-IM). As a shopping center, it has history of zoning cases which is to be expected for a use which has multiple tenants. In Case No.: 2013-104-SPHA (the “2013 Case”), Special Hearing relief was granted in order to amend an Order and site

plan approved in Case No.: 2012-0082-A. Additionally, in the 2013 Case, Variance relief was granted to approve 846 off-street parking spaces in lieu of the required 1,061. Aerial photographs of the Property were provided showing other commercial uses which immediately surround the Property. (Pet. Ex. 3). Street view photographs inform that the shopping center has a nice appearance and has attracted quality tenants. (Pet. Ex. 4).

In this case, Petitioner seeks to add 20,894 sf of retail and commercial use as shown on the Site Plan. (Pet. Ex. 2). Specifically, on the shopping center parking lot, Petitioner proposes to construct a free standing building (15,655 sf). On the Shell Gas station property, Petitioner proposes to raze and remove all structures in regard to the gas station and construct a free standing building which may be used as restaurant with a drive thru lane (5,239 sf). Toward this end goal, Petitioner is proposing to provide a total of 844 parking spaces.

Mr. Godat provided architectural renderings of the proposed free-standing buildings which were also provided to DOP. (Pet. Ex. 6). Mr. Godat highlighted that the proposed buildings would be 4-sided architectural buildings without a back door. He added that the buildings would be a mix of composite wood and masonry, and would be pleasantly landscaped to provide screening. In regard to the DOP comment to move the proposed dumpster for the drive-thru restaurant, Mr. Godat responded that the proposed dumpsters would be adequately screened with wood composite doors and he pointed to the steep grade change (retaining wall is >2ft above grade) along York Rd. which naturally conceals any view of the dumpster enclosure. (Pet. Ex. 6). A driver along York Rd. would only see the top of the proposed drive-thru restaurant. He also commented they are no proposed signs for the buildings as tenants have not yet been identified.

Mr. Sharon testified that, as proposed, the 15,655 sf building can either be leased for office or retail. The Petitioner will be adding sidewalks to the Property as well as outdoor dining area(s)

as shown on the Site Plan. (Pet. Ex. 2). Mr. Sharon concurred with the placement of the dumpster enclosure area along road as being nearly unnoticeable due to the significant drop in grade. He added that the drop in grade will likely demand signs along the York Rd. side of the proposed drive-thru restaurant.

Mr. Sharon opined that the Property was unique due to its irregular ‘L-shape’ and grade drop along York Rd. He noted importantly that these unique features in addition to the lighted intersection from the shopping center onto Ridgely Rd. and Franke and Kurtz Avenues, are not conducive to, and reduce the amount of area needed, in order to comply with the required number of parking spaces under BCZR. It was Mr. Sharon’s opinion that these unique features create a practical difficulty and unreasonable hardship in meeting the required parking calculations. The Petitioner does not have adjacent property which is available for purchase as the Property is surrounded by public roads. Mr. Sharon testified that the amount of parking provided is adequate to meet the needs of the existing shopping center as well as the proposed buildings. As a result, in response to the DPWT Comment, Mr. Sharon confirmed that there is no concern of spill-over parking from the shopping center into the nearby Historic Lutherville neighborhood or into any other nearby neighborhood. Mr. Sharon noted that there is no shared parking arrangement with an adjacent retail stores.

Mr. Sharon also testified that a Schematic Landscape Plan was prepared by the landscape architect in his firm and that it meets the Baltimore County Landscape Manual. (Pet. Ex. 7). The Schematic Landscape Plan provides street trees, ornamental trees and shrubs. A Final Landscape Plan will be filed. In regard to Amenity Open Space (“AOS”), Mr. Sharon stated that the CCC overlay district requires AOS or green areas within the shopping center. To meet that goal, he prepared an AOS Plan which shows this space in shaded areas. (Pet. Ex. 10). Finally, for ease of

reference, Mr. Sharon prepared a colored-rendering Site Plan showing the proposed improvements, AOS, sidewalks, outdoor dining areas, and proposed buildings. (Pet. 11).

In regard to the parking variance, Mr. Guckert testified that he prepared Parking Occupancy Study which concluded that, notwithstanding the required BCZR 1179 parking spaces, he found that peak hour parking demand was 333 spaces out of the current 916 spaces (29% of total existing spaces). (Pet. Ex. 9). Mr. Guckert also factored in holiday season parking demand and found that this equated to 446 spaces. He opined that when considering that an additional 120 spaces would be required for the new buildings, along with holiday season peak demand of 446, the proposed 844 spaces are more than adequate to meet the parking demands.

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). And, "the administrative practice in Baltimore County has been to determine whether the proposed Special Hearing would be compatible with the community and generally consistent with the spirit and intent of the regulations." *Kiesling v. Long*, Unreported Opinion, No. 1485, Md. App. (Sept. Term 2016). Based on the evidence, I find that the Special Hearing relief to amend the Opinion

and Order in Case No.: 2013-0104-SPHA should be granted as it is within the spirit and intent of the BCZR. The Petitioner is proposing to construct 2 buildings and to otherwise improve and enhance the shopping center as shown on the Site Plan which will benefit the surrounding community.

VARIANCE

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 was previously adjudicated in Case No.: 2013-104-SPHA to be unique due to its irregular shape and location within a ‘valley’ created by a steep grade change and drop off in elevation from York Rd. which adjoins the Property. As a result, that factual finding is applicable to this case under the doctrine of collateral estoppel. *Garrity v. Maryland State Bd. of Plumbing*, 447 Md. 359, 368 (2016). (See also *Colandrea v. Wilde Lake Community Ass’n, Inc.*, 361 Md. 391 (2000); *Washington Suburban Sanitary Commission v. TKU Associates*, 281 Md. 1, 18-19 (1977)). The Property’s shape has not changed since 2013.

Based on these unique features, I find that strict compliance with the required parking calculations would result in a practical difficulty or unreasonable hardship, given that the Petitioner would be unable to complete its planned enhancements. While the DPWT Comment objected to “business parking in this residential zone”, I note that zoning for this Property is both business and industrial, not residential, and the Petition does not seek approval for business parking in a residential zone. Additionally, I am satisfied that the Parking Occupancy Study

confirms that this Shopping Center has more than the actual number of parking spaces needed for both existing and proposed uses. In regard to the dumpster location for the drive-thru restaurant, I find that both Mr. Sharon and Mr. Godat's uncontroverted testimony, combined with the photographs of the existing grade change along York Rd. and proposed drive-thru restaurant with dumpster enclosure, sufficiently shields the dumpster from view along York Rd. Finally, I 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. This is demonstrated by the absence of opposition.

THEREFORE, IT IS ORDERED this 5th day of **November, 2021**, by this Administrative Law Judge that the Petition for Special Hearing to amend the Order and site plan approved in Zoning Case No. 2013-0104-SPHA, in accordance with the terms of this Order, be, and it is hereby, **GRANTED.**

IT IS FURTHER ORDERED that the Variance from BCZR, §409.6.A.2 to allow a total of 844 off-street parking spaces in lieu of the required 1,179 parking spaces, be, and it 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.
2. The Site Plan (Pet. Ex. 2) shall be incorporated into and made a part of this Opinion and Order.
3. All signage shall comply with BCZR, §450.

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

A handwritten signature in black ink that reads "Maureen E. Murphy". The signature is written in a cursive style with a large, stylized initial 'M'.

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm