

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
Corner NW side of Belair Road and		
NE side of Schroeder Avenue	*	DEPUTY ZONING
11 th Election District		
5 th Councilmanic District	*	COMMISSIONER
(9810 and 9820 Belair Road and		
4040 Schroeder Avenue)	*	FOR BALTIMORE COUNTY
Tarragon, Inc.	*	
<i>Petitioner</i>		
	*	CASE NO. 2009-0048-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owner of the subject property, Tarragon, Inc., by Kevin Havens, its authorized representative. Variance relief is requested from Section 409.6.A.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit 156 parking spaces in lieu of the required 172 parking spaces. The subject property and requested relief are more fully depicted on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the variance request was D. Dusky Holman, Esquire, attorney for Petitioner Tarragon, Inc. Also appearing in support of the requested relief was James V. Hermann with Morris & Ritchie Associates, Inc., the registered landscape architect who prepared the site plan. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is an irregular-shaped property consisting of approximately 7.138 acres, more or less, zoned D.R.2 (0.540 acre) and B.L.R. (6.588 acres). The property is located on the northwest side of Belair Road and is situated between Schroeder Avenue and Gunview Road in the Perry Hall area of Baltimore

County. The property was recently developed and is presently improved with several one-story structures and parking areas, including a bank, a pharmacy, and a 12,000 square foot building that will have the capacity to house several mixed use tenants. It is that building which is the subject of the instant variance request.

As shown on the aerial photograph that was marked and accepted into evidence as Petitioner's Exhibit 5, as one travels north on Belair Road, the area becomes less dense and developed. The subject property is somewhat uniquely located because it is where the area transitions from a more densely populated area with residential neighborhoods surrounding commercial development along Belair Road, to the less developed areas with more open space further north. Development of the subject property was proposed during the 2000 Comprehensive Zoning Map Process ("CZMP"). During that time, the Developer, Honeygo Junction, LLC, was working with various nearby property owners and attempting to alleviate their concerns over the potential impact of the development, including specifically the Perry Hall Improvement Association, Inc. (the "Association") led by David Marks. One of the Association's main concerns was that there be adequate landscape buffers between the property and the adjoining roads that are in proximity to residential neighborhoods. Although the Baltimore County Landscape Manual required a 10 foot landscape buffer for this property along Belair Road and 20 feet along Schroeder Avenue and Gunview Road, the Association requested that the landscape buffer be substantially wider. As a condition of the Association's support of the project during the 2000 CZMP, the Developer agreed to a landscape buffer of 30 feet wide on Belair Road, 40 feet wide adjacent to the southernmost right-of-way line of Gunview Road (if that road is extended to Belair Road as shown on the site plan), and the required 20 feet wide along Schroeder Avenue. This agreement was memorialized in the "Declaration of Covenants,

Conditions and Restrictions” dated October 6, 2000, a copy of which was marked and accepted into evidence as Petitioner’s Exhibit 2. The proposed landscape buffer is also shown on a site plan that delineates what would normally be required by the landscape manual and the additional buffer areas agreed to by the Developer and the Association. This site plan was marked and accepted into evidence as Petitioner’s Exhibit 4. A green shaded area on the site plan represents the landscape buffer area.

At this juncture, as part of the development of the 12,000 square foot building and as depicted on the site plan, Petitioner plans to divide 3,000 square feet of the building for restaurant use and the remaining 9,000 for retail use. Photographs of the property and the existing improvements were marked and accepted into evidence as Petitioner’s Exhibits 3A and 3B. The parking requirement for the restaurant use is what necessitates the instant variance request. In particular, Petitioner is currently under lease with a tenant to open a new authentic Italian café/eatery. This restaurant would not have table service and would not have a liquor license, and hence would not serve alcohol. Patrons would order their menu items and beverages to carry out or eat in the restaurant.

The parking calculations are detailed on the site plan at Note 15. The total amount of parking spaces proposed for the site is 156 spaces. The pharmacy and retail uses each require 5 parking spaces per 1,000 square feet of gross floor area, and the bank requires 3.3 spaces per 1,000 square feet, for a total of 124 spaces. However, the restaurant use requires significantly more parking according to the Zoning Regulations. This use requires 16 spaces per 1,000 square feet for a total of 48 spaces, and a grand total of 172 spaces required for the entire site -- 16 more than the proposed 156.

In support of the parking variance request, Petitioner's attorney, Mr. Holman, discussed a number of unusual characteristics of the property that reduce the available space for parking and drive the need for the variance. First, Mr. Holman pointed to the wider landscape buffers that were agreed to between the original Developer, Honeygo Junction, LLC, and the Perry Hall Improvement Association, Inc., as outlined in Petitioner's Exhibit 2 and depicted on the shaded site plan that was accepted into evidence as Petitioner's Exhibit 4. This agreement was made in part to further the Association's goals of preserving and protecting the value and desirability of the surrounding residential properties for the benefit of those homeowners. In providing significantly wider landscape buffers, Mr. Holman indicated that the parking layout and configuration had to be altered as well, ultimately resulting in fewer spaces.

Also noteworthy is that according to Mr. Holman and Petitioner's landscape architect, Mr. Hermann, Gunview Road, although a future public road, actually lies within the boundary of the subject property. Part of Petitioner's plan for completing the development of the property is to extend Gunview Road from Belair Road to provide an entrance from Gunview Road. This is depicted on another site plan with shading of the proposed road and right-of-way area that was marked and accepted into evidence as Petitioner's Exhibit 7. However, as shown on this site plan, the road will take up at least 25,000 square feet of otherwise buildable area, once again lessening the space available for parking. Another characteristic that impacts the subject property in terms of available space for parking is the forest buffer and forest conservation easement that lies to the rear of the property. This area consists of approximately 0.70 acre and again limits the space available to provide the full complement of required parking.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments received from the Office of Planning dated September 24,

2008 indicate that they have reviewed Petitioner's application package, and require only that Petitioner submit building elevations of all sides of the proposed building for review and approval prior to issuance of any building permits.¹

Considering of all the testimony and evidence presented, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. In particular, the widening of the required landscape buffers along the road frontages, as well as the right-of-way area for Gunview Road and the forest buffer and forest conservation easement on the property, limit the available space for parking. One could argue that the loss of space due to the widened landscape buffer is self-imposed as a result of the agreement entered into between the Developer, Honeygo Junction, LLC, and the Perry Hall Improvement Association, Inc. However, because the widening of the buffer area satisfies the Association's concerns over the potential impact of the development and furthers their goal of preserving the nearby residential communities, I will not hold this against Petitioner. In short, I will not penalize Petitioner for working with the community, and yielding to an extent in favor of the community's concerns. As such, based on the above circumstances, I find that the property is unique in a zoning sense.

I further find that Petitioner would suffer undue prejudice and unreasonable hardship if the requested zoning relief were not granted. The leasing of space to the Italian restaurant is essentially what drives the need for the variance. The parking requirements for the other commercial uses can be met without zoning relief; however, a restaurant requires significantly more parking than the other uses. On the other hand, a restaurant is a desirable tenant because most retail shopping centers are anchored by some kind of food service or restaurant. If the

¹ It should be noted that it appears from the photographs of the subject property submitted by Petitioner that the building improvements, and in particular the 12,000 square foot building that would house the proposed restaurant, have already been constructed.

variance relief were not granted, then Petitioner would be unable to rent to an otherwise permissible and popular tenant. I also believe that the parking configuration as shown on the site plan will be self regulating, and that there will be overlapping parking availability between the existing bank and the proposed restaurant. In my view, the peak hours for the bank will be during the day and the peak hours for the restaurant will be in the evenings. Any competition for parking spaces during the day will be minimal and, again, will be self-regulating. If a customer of the restaurant is not able to find a parking space during the day, they will tend to go somewhere else nearby, such as Damon's Restaurant a few blocks south.

Finally, I find this variance can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. Thus, I find that this variance can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R, as established in *Cromwell v. Ward*, 102 Md.App. 691 (1995).

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by Petitioner, I find that Petitioner's variance request should be granted.

THEREFORE, IT IS ORDERED this 20th day of November, 2008 by this Deputy Zoning Commissioner, that Petitioner's request for Variance relief from Section 409.6.A.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit 156 parking spaces in lieu of the required 172 parking spaces, be and is hereby GRANTED. The relief granted herein shall be subject to the following:

1. Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If,

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

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz