

IN RE: **PETITIONS FOR SPECIAL HEARING ***
AND VARIANCE

SW/S York Road (MD Rte. 45), 230' SE * BEFORE THE
C/line of Fairmount Road * ZONING COMMISSIONER
(936 York Road) * FOR

9th Election District * BALTIMORE COUNTY
5th Council District *
*
McComas Associates, LLC * **Case No. 2009-0079-SPHA**
Petitioner *

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance for property filed by Michael C. McComas, managing member, of the property owner McComas Associates, LLC. The Petitioner requests a special hearing to approve a modified parking plan pursuant to Section 409.12 of the Baltimore County Zoning Regulations (B.C.Z.R.). Variance relief is requested from B.C.Z.R. Section 238.2 to permit a 0 foot setback with regard to the side and rear yards for an existing building in lieu of the required 30 feet. In addition, a variance from B.C.Z.R. Section 409.8.A.1 and the Baltimore County Landscape Manual is needed to permit a landscape buffer setback as little as 0 feet in lieu of the required 6 feet from a commercial property and 10 feet from a residential property. The requested relief and subject property are more particularly described on the amended site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 2.

Appearing at the requisite public hearing in support of the request were Michael C. McComas, on behalf of the property owner, and Dean C. Hoover of Morris & Ritchie Associates, Inc., the consultant who prepared the site plan. The Petitioner was represented by

Lawrence E. Schmidt, Esquire of Gildea & Schmidt, LLC. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the subject property is located on the west side of York Road just south of Fairmount Avenue in the Towson business core. The property is 155' wide by 188' deep and contains approximately 0.61 acres in area (26,571 square feet), split-zoned B.R. and D.R.5.5. The predominant zoning of the property is B.R., with a narrow strip along the rear of the property zoned D.R.5.5. This section of York Road from the center of Towson to the interchange for the Baltimore Beltway (I-695) is dominated by commercial and retail uses. Immediately adjacent to the property is an existing McDonalds restaurant and automobile uses (car dealerships, car washes, service stations, etc.) are all located nearby. The rear of the property abuts the campus of the Carver High School. Access to this public high school is by way of a drive which immediately abuts the property's north (side) property line.

Presently, the property is improved with two (2) distinct buildings which share a common internal wall. The front structure is a 2,857 square foot, one-story building which is used as a mattress store (Mattress Giant). The rear of this structure is connected to a 5,315 square foot commercial building which is used as a carpet retailer (CarpetLand). The rest of the site features a macadam lot area utilized for parking for both of these retail establishments.

The Petitioner proposes a renovation of the site and a modification of one of the uses. The Carpet Land store to the rear of the site will continue to operate and will not be changed. Although there will be no changes to the footprint of the front building, a new use is proposed. Specifically, a Five Guys Restaurant will occupy the 2,857 square foot building area. The Five Guys Restaurant is a chain operation with locations throughout the Baltimore metropolitan area. The restaurant has interior seating and features a hamburger, chicken and milkshake type menu.

The use was described as an upscale “hamburger restaurant” during the hearing and exterior elevation drawings of other franchise operations were presented.

The petition for variance seeks relief to legitimize the existing building locations. As noted, Section 238.2 of the B.C.Z.R. requires a 30-foot setback from a commercial building to the side and rear property lines. As more particularly shown on the amended plan, the existing structure to the rear is situated so that the southeast corner of the building immediately abuts the rear and side property line(s). Thus, a 0 foot setback for this existing structure is requested. As illustrated, the building is constructed so as to taper from its point of intersection with the property line (southeast corner) so that an increased setback is provided along the other sides of the building. However, at it's closest point, a 0 foot setback is indicated.

Similarly, variance relief is requested to approve a 0 foot setback for landscaping purposes. The Baltimore County Landscape Manual requires a 10-foot setback to a residential zone line and a 6-foot setback towards a commercial zone. Again, the rear southeastern corner of the building is setback 0 feet from the McDonald's restaurant onto the south side and the Carver School to the west or rear.

As noted, both of the variances requested are sought to legitimize existing conditions. Testimony offered at the hearing was that building is in excess of 30 years old. Moreover, it is to be noted that although there is residential zoning immediately adjacent to the site, there are not dwellings in the vicinity. Rather, the residential zoning accommodates the institutional use of the public high school campus next door. It was also indicated that Baltimore County plans significant renovations to that school, which will impact its relationship with the subject lot.

As to the petition for special hearing, approval of a modified parking plan is requested pursuant to Section 409.12 of the B.C.Z.R. A modified parking plan can be approved in

instances such as this, when an existing facility is being redeveloped. In this regard, the site plan shows that 43 spaces will be provided on the site. Testimony was offered that this parking is sufficient for the two proposed uses. Specifically, it is anticipated that the uses will have different peak periods for their business operations. In addition to the numeric parking requirement, the modified parking plan approval is sought to allow the proposed layout in terms of traffic circulation. As to this issue, a Zoning Advisory Committee (ZAC) comment was received from the Baltimore County Department of Public Works/Bureau of Traffic Engineering, and the State Highway Administration. A similar comment was also received from the Office of People's Counsel. These comments all requested the elimination of two parking spaces, which were proposed to be located immediately adjacent to York Road. A concern was expressed regarding the potential for congestion spilling into York Road if this area was used for the two parking spaces, shown on the original plan filed with the petitions (Petitioner's Exhibit 1). In view of these concerns and a recommendation received from Steve Weber, a County traffic engineer, the plan has been amended (Petitioner's Exhibit 2) so as to convert these two spaces to an outdoor eating area. Therefore, the amended plan addresses the ZAC concerns expressed by the State Highway Administration and the Bureau of Traffic Engineering.

A ZAC comment was also received from the Office of Planning. This comment stated that review by the Design Review Panel was not required, in that existing buildings are being converted and no new exterior construction or change to the building footprint is proposed. The Office of Planning also suggested certain landscaping elements. I concur that certain landscaping should be required along the property's frontage adjacent to York Road. The amended plan specifically delineates landscaping in this area. Although the Office of Planning requested landscaping along the rear property line, I decline to impose this requirement. There is

little room in this area due to the location of the existing building. Moreover, given the proposed improvements and renovation to the Carver School, landscaping along this area is unnecessary at this time.

In sum, I am persuaded to grant the petitions. I find that unique conditions (i.e. irregular lot, existing improvements, etc.) exist that justify the variance request. Moreover, a practical difficulty would result if the relief requested were denied. The Petitioner's proposal represents an appropriate redevelopment of this property consistent with the efforts to revitalize the Towson business core (See Petitioner's Exhibit 3, a letter of support from the Greater Towson Committee). Moreover, the amended plan addresses the relevant ZAC comments and those from the Office of People's Counsel related to the parking layout and landscaping.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by Zoning Commissioner for Baltimore County, this 19th day of November, 2008 that the Petition for Special Hearing filed under Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) requesting approval of a modified parking plan, pursuant to Section 409.12, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from B.C.Z.R. Section 238.2 to permit a 0 foot setback with regard to the side and rear yards for an existing building in lieu of the required 30 feet and from B.C.Z.R. Section 409.8.A.1 and the Baltimore County Landscape Manual to permit a landscape buffer setback as little as 0 feet in lieu of the required 6 feet from a commercial property and 10 feet from a residential property, in accordance with Petitioner's Exhibit 2, be and is hereby GRANTED subject to the following:

1. Petitioner is advised that they may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioner is hereby made

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

WJW:dlw

____SIGNED_____
WILLIAM J. WISEMAN, III
Zoning Commissioner for
Baltimore County