

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N side of South Dolfield Road, 244 feet		
E of intersection of Owings Mills Court	*	DEPUTY ZONING
4 th Election District		
4 th Councilmanic District	*	COMMISSIONER
(10227 South Dolfield Road)		
	*	FOR BALTIMORE COUNTY
Donald H. Kirk, Jr.		
<i>Petitioner</i>	*	CASE NO. 2009-0097-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, Donald H. Kirk, Jr. Petitioner is requesting variance relief from Section 255.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit side and rear setback of 3 +/- feet in lieu of required 30 feet and a front yard setback of 21 +/- in lieu of required 25 feet from property line.¹ 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 requests was Petitioner Donald H. Kirk, Jr., along with Rick Richardson of Richardson Engineering, LLC, the professional engineer who prepared the site plan, and Gary Cearfoss, the builder retained by Petitioner. John B. Gontrum, Esquire, appeared and represented Petitioner. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence revealed that the subject property is a rectangular-shaped lot containing approximately 1.221 acres of land zoned M.L.-I.M. The property is located on the

¹ At the outset of the hearing, the Petitioner made two minor amendments to the Petition, which were marked on the site plan. First, the site plan was amended to show that the one-story proposed addition marked as a "warehouse" is actually a proposed "office." Second, a note, which was only intended for use by Mr. Richardson, the engineer who prepared the site plan, was removed from the plan accepted into evidence. Petitioner was permitted to proceed on the amended request since the changes were minor and had no effect on the relief requested in the Variance petition.

north side of South Dolfield Road between Painter's Mill Road and Gwynn Mill Court in the Owings Mills area of Baltimore County. Petitioner submitted an aerial photograph of the subject property that was marked and accepted into evidence as Petitioner's Exhibit 2. The photograph reveals that the property is improved with three buildings, the first of which is a 10,000 square foot one-story office and warehouse building with a covered paving and parking area toward the rear of the property. There are also two existing pole barns in the northwest corner of the property.

Further evidence demonstrated that Windsor Electric Company operates its business out of the existing office/warehouse building. The company is proposing to remove the covered paving and parking areas on the north side of the existing building as well as the two pole barns in the northwest section of the property. In place of these structures, Petitioner proposes to build an addition to the east side of the office/warehouse building that will serve as new office space, as well as a two-story warehouse addition to the rear of the building that will primarily serve as storage for Windsor Electric.

Petitioner submitted several photographs that shed additional light on the layout of the property and request for variance. The photographs were marked and accepted into evidence as Petitioner's Exhibits 3A through 3F. Exhibit 3A shows the front of the existing office/warehouse building, which is a one-story brick building located 21 feet from the front boundary of the property. Petitioner is first requesting a variance to legitimize this existing 21-foot setback, which does not meet the minimum 25-foot setback in the M.L. Zone. Exhibits 3B through 3E show the east side of the existing building, which is currently used as a fenced in storage area for Windsor Electric Company. As the photographs reveal, the area is currently used as a contractor's storage yard and is surrounded by a fence lined with barbwire to protect large, expensive items such as drums and trailers. Exhibit 3F shows the north side of the existing

building where the existing paving and parking area will be removed and replaced with a two-story warehouse addition. Petitioner also submitted a rendering of the proposed addition that was marked and accepted into evidence as Petitioner's Exhibit 4.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated November 3, 2008 which indicate the site is located in a Master Plan designated Growth Area (Owings Mills) and is surrounded by other industrial uses. Discussion with Petitioner's attorney revealed that Petitioner owns the adjacent property. The Planning Office also indicated it has no comment on the requested variance. Comments were also received from the Department of Environmental Protection and Resource Management dated November 6, 2008, which indicate that the property must comply with the Forest Conservation Regulations. The proposed subdivision would require that the entire property to be subdivided comply with Baltimore County's Forest Conservation Regulations unless it can be demonstrated that the redevelopment is exempt per Section 33-6-103(b) of the Baltimore County Code.

Further comment was received from Rick Cobert with the Baltimore County Department of Economic Development. Mr. Cobert indicated that his Department supports the Petition for Variance and noted that Petitioner is an electrical contractor that has been very successful and has created a number of jobs over the years in growing his business. Petitioner began his business with approximately 30 employees and now has approximately 170. The Department of Economic Development supports Petitioner's efforts to continue to responsibly grow and improve his business.

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 requests. In particular, the property was subdivided and recorded in 1963, prior to the latest

iteration of the B.C.Z.R. The layout of the existing structures places unusual restrictions on Petitioner's ability to expand for office and storage space. Since the existing building was placed on the property 40 to 50 years ago, and in a manner that restricts Petitioner's options for modernizing the workspace of Windsor Electric, I find that the imposition of zoning on this property disproportionately impacts the subject property as compared to others in the zoning district. Indeed, part of the request for variance seeks to legitimize the front setback of the existing building, which does not meet the minimum requirements in an M.L. Zone.

I further find that this variance request can be granted in strict harmony with the spirit and intent of the B.C.Z.R., and in such a manner as to grant relief without injury to the public health, safety and general welfare. I am convinced that the proposed additions will have no negative effect on the surrounding locale, particularly in light of the fact that Petitioner owns the adjacent property and is in favor of reducing the setbacks between the side and rear lines that separate his properties. The variance requests will also improve the appearance of the east side of the existing structure, which is currently used as a contractor's storage yard that is lined with an unsightly barbwire fence. If the petition for variance is granted, Petitioner will build an addition that will store all of the contractor's equipment inside newly constructed warehouse space and out of the view of the public. This will have a positive effect on the aesthetics of the property and surrounding area, and will permit Petitioner to store his equipment in a safer manner. These factors, along with the Department of Economic Development's comment that it supports Petitioner's attempt to modernize his business, lead me to find that the variance can be granted within the spirit and intent of the B.C.Z.R.

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

THEREFORE, IT IS ORDERED this 23rd day of December, 2008 by this Deputy Zoning Commissioner, that Petitioner's variance relief request from Section 255.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit side and rear setback of 3 +/- feet in lieu of required 30 feet and a front yard setback of 21 +/- feet in lieu of required 25 feet from property line be and are 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, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

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