

IN RE: <b>PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE
NE Corner of Holabird Avenue and	*	ZONING COMMISSIONER
Holaview Road	*	
<b>(7444 Holabird Avenue)</b>	*	FOR
	*	BALTIMORE COUNTY
12 <sup>th</sup> Election District		
7 <sup>th</sup> Council District		
Holabird East, Inc.	*	<b>Case No. 2009-0143-SPH</b>
Petitioner		

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by Frank D. Scarfield, Sr., on behalf of Holabird East, Inc., through its attorney, Deborah C. Dopkin, Esquire. Holabird East, Inc. owns the subject property and is owner of an adjacent 7.8-acre tract of land known as the Holabird East Apartments. The Petitioner requests a special hearing to modify the site plan and relief granted in Case No. 68-132-R and affirm the existing non-conforming use. In addition, relief is requested from the off-street parking regulations as follows: From Section 409.4.C of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve an existing two-way drive aisle of 19' feet in lieu of the required 22'; from Section 409.6.A to approve 39 (28 on-site and 11 off-site) parking spaces in lieu of the 51 required; from Section 409.7.B to approve off-site parking of 11 business parking spaces in a residential zone; from Section 409.8 to approve (i) a modification of landscaping standards, (ii) parking as close as 0' to the right-of-way of a public street in lieu of the required 10', and (iii) existing business parking in a residential zone. Finally, the Petitioner requests, in the alternative, relief pursuant to Section 409.12.B of the B.C.Z.R. to approve a modified parking plan. The subject property and requested relief are more particularly described on the site plan submitted which were accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were Bettina Mabry and Deborah Torre, co-property managers and relatives of the principal owner of the property owner; Donald E. Hicks, professional engineer with Hicks Engineering Associates, Inc., who prepared the site plan for this property; Thomas J. Hoff, landscape architect with Thomas J. Hoff, Inc., who prepared a landscape plan to improve the property's appearance, and Deborah C. Dopkin, Esquire, attorney for the Petitioner. Also in attendance and participating at the hearing was John R. Alexander, Community Planner, with the Office of Planning. There were no Protestants or other interested persons present. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case and at the onset of the hearing it was acknowledged that the Petitioner hired Thomas J. Hoff, Inc., who worked in concert with Avery Harden in preparing a landscape plan for this property in response to comments submitted by Mr. Zimmerman and Stephen E. Weber, Chief of Traffic Engineering, Department of Public Works, who had reviewed the initial site plan. The schematic landscape plan provides for the removal of angled parking in front of the office and carry-out store, removing existing paving that borders along the County right(s)-of-way(s) that allows for the providing of a landscape buffer between the sidewalk areas and the property line and a 6' high wood screen fence between the rear of the site and the adjoining residentially zoned and used properties in that area.

Testimony and evidence presented revealed that the subject property is an irregularly shaped parcel, containing approximately 0.52 acres in area, primarily zoned B.L. with a narrow strip of D.R.16 that runs across the rear of the lot at its northern boundary. The property is part of a small commercial strip surrounded by single-family and multi-family residential units with other commercial properties to the east fronting on Holabird Avenue. *See* the 20 photographs received as Petitioner's Exhibit 3B depicting existing conditions and surrounding uses.

The facts of the case are relatively simple as referenced in the testimony and evidence produced at the hearing. In order to appreciate the nature of the relief requested, an understanding of the prior zoning history of the subject site is appropriate. The property was originally developed in the late 1960's with a 7-Eleven convenience store fronting on Holabird Avenue (formerly Trappe Road) followed by connecting offices and a carry-out restaurant to the rear. Frank D. Scarfield, as President of Holabird Apartments, Inc., along with the Diekmann and Martin families, sought approval for a Zoning Re-classification and/or Special Exception to allow for these facilities in Case No. 68-132-R. The site plan filed with that petition asked for, among other approvals, the inclusion of 11 parking spaces across the rear of the property that was rezoned from R-A to B.L. (*See* Petitioner's Exhibit 4).<sup>1</sup> The relief requested was granted by John G. Rose, Zoning Commissioner, on December 13, 1967. Thereafter, Frank Scarfield (Holabird East, Inc.) purchased the property from the Diekmann and Martin families in 1972 and has maintained the uses to date. The offices situated between the 7-Eleven store and DiDi's pizza carry-out serve as the management offices for the center and adjoining Holabird East Apartments wherein Mesdames Mabry and Torre oversee the operations.

The relief sought in the instant case relates to a proposed addition to the west side of the first floor of the building underneath an existing second floor overhang (*See* Petitioner's Exhibit B – photographs 4, 5 and 6). As shown on the site plan, a 6'-6" wide x 57'-2" long (378 square feet) office and carry-out addition is proposed). Evidently, this work under the canopy was being performed by the St. John's Construction Company without the benefit of a proper

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<sup>1</sup> These are the same 11 parking spaces depicted on the current site plan (Petitioner's Exhibit 1) that are now located in the residential D.R.16 zoning classification. Ms. Dopkin opined that this more than likely resulted from a drafting error of the zoning maps over the years under the Comprehensive Zoning Map Process (CZMP). In any event, this has resulted in a non-conforming use as the parking in a residential zone has existed continuously since the property was developed pursuant to a lawful zoning Order. In other words, Case No. 68-132-R creates a presumption of correctness as to the zoning classification and use granted, which were supported by the record in that case.

building permit. Code Inspection and Enforcement Office Grant Kidd issued a Stop Work Notice. Thus, the requested special hearing relief is necessary in order to amend the previous site plan and modify, if necessary, the accessory off-street parking regulations contained in Section 409 of the B.C.Z.R. These requests are necessitated by the existing uses of the property of an office (first and second floors) and the convenience and carry-out store on the first floors. Although in operation for more than 39 years, the square footage calculations as shown on Petitioner's Exhibit 1 for each use require 51 spaces. It is beyond debate to assert that the proposed addition will have a detrimental impact on the deficient parking inherent at this site. I find the addition would be fairly negligible vis-à-vis traffic and parking impacts. The addition would be used by the existing business employees. That is to say, the number of employees will remain the same. No new uses or services are to be provided. This finding is substantiated by Stephen E. Weber, who in his correspondence to the Office of People's Counsel, dated January 13, 2009, states in pertinent part:

“Admittedly the proposed addition to the west side of the first floor of the building . . . would be a fairly negligible traffic/parking impact. While the site is deficient with parking, a check of our records indicates that we have never received a complaint from anyone about traffic or parking issues at this site.”

Similarly, on February 3, 2009, Mr. Weber addressed drive aisle and landscaping concerns stating:

“Please be advised that I met with Tom Hoff, engineer for the petitioner, and Avery Harden this morning regarding this case. Apparently John Alexander from the Planning Office had prepared some comments regarding providing landscaping within the County right-of-way . . . Tom's client is prepared to remove the paving that is within the County right-of-way and provide a landscaped buffer between the sidewalk area and the property line. In discussing the issue with Avery, we will probably not require that a curb be constructed on the petitioners property line, but we will require either use of items like landscaping timbers and/or wheel stops along the parking lot side of the landscape buffer to help insure that cars are not able to encroach into the right-of-way and

the landscaping area and ruin it. Given the narrow width of available pavement on the site, we're not necessarily looking to take any of it away from the property owner, but we do want to see that the County right-of-way is returned to the use of the public and that it provides a buffer area between pedestrians walking along Holaview Rd. In addition, this action will make angle parking next to the building basically impossible, thus solving that habit. If customers do happen to parallel park next to the building, I don't necessarily find that to present any significant traffic issues and at least will contain the issues on the site itself'.

In regard to parking, the small center has 28 spaces, having been built many years ago. Fifty-one (51) spaces are needed under the present regulations for the existing carry-out restaurant (8 spaces), convenience store (13 spaces) and office with addition (30 spaces). Mesdames Torre and Mabry testified from their personal knowledge of the property and that there are no parking lot problems on site today. The two (2) employees of DiDi's Pizza live in the adjacent apartments and walk to work. There are no tables inside for eating and most of DiDi's business is by delivery off-site. The 7-Eleven operates 24/7 and has four (4) employees who maintain the site in a clean and orderly fashion. The lighting on the building provides security to the site. Many of the patrons are apartment complex tenants, including those that make visits to the Holabird Apartments rental office. Most walk to this commercial strip. Ms. Torre pointed out that fortunately there is parking along Holaview Road. *See* photographs 16 through 20 – Petitioner's Exhibit 3-B. Many visitors coming and going from the apartment complex park on Holaview Road when stopping at the stores and do not occupy on-site customer parking spaces.

On behalf of the Petitioner, Ms. Dopkin submitted photographs and site plans of the Holabird East Apartments demonstrating pedestrian walkways to multiple off-street parking sites within 300 feet. *See* photographs 3B-9 through 3B-15 and site plan exhibits 5A and 5B. In this regard, the apartment complex has 50 additional spaces than needed and Mesdames Torre and

Mabry confirm the allowed off-premises parking arrangement. B.C.Z.R. Section 409.7B allows off-street parking spaces in the Business, Local zone provided they “shall be located within 500 feet walking distance of a building entrance to the use that such spaces serve”. Ms. Dopkin and Donald E. Hicks, P.E. opined that this arrangement meets the requirements and that present parking is adequate. On the other hand, Mr. Hicks opined that if these requests proceed under a modified parking plan of Section 409.12 the need to provide all spaces required would be an undue hardship on the Petitioner for the reasons given.

Based upon the testimony and evidence offered, I am persuaded to grant the amended relief. As noted above, most of the requests are to legitimize existing conditions. In my judgment, the Petitioner’s providing a landscape buffer of a sufficient height to block from residential view parked cars is well thought out and appropriate. Mr. Hoff testified at the hearing that he had reviewed these changes with the Office of Planning and the County’s Landscape Architect Avery Harden and that they are not opposed to the modified request. Based on these findings, I conclude that the Petitioner has met the requirements of Sections 500.7 and 502.1 of the B.C.Z.R. to allow an amendment to the previously approved site plan in accordance with the relief granted herein.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth herein, the relief requested shall be granted.

THEREFORE, IT IS ORDERED, by the Zoning Commissioner for Baltimore County this 10<sup>th</sup> day of February 2009, that the Petition for Special Hearing seeking relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: **(1)** to modify the site plan and relief granted in Case No. 68-132-R; **(2)** to approve an existing two-way drive aisle of 19' feet in lieu of the required 22' (Section 409.4.C); **(3)** to approve 39 (28 on-site and 11 off-site) parking

spaces in lieu of the 51 required (Section 409.6.A); **(4)** to approve off-site parking of 11 business parking spaces in a residential zone (Section 409.7.B); **(5)** to approve (i) a modification of landscaping standards, (ii) parking as close as 0' to the right-of-way of a public street in lieu of the required 10', and (iii) existing business parking in a residential zone (Section 409.8), and **(6)** to approve a modified parking plan (Section 409.12.B), in accordance with Petitioner's Exhibits 1 and 2, be and are hereby GRANTED, subject to the following restrictions:

- 1) The Petitioner may apply for its building permit and be granted same upon receipt of this Order; however Petitioner is hereby made aware that proceeding at this time is at its own risk until the thirty (30) day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) Use of the off-site parking lot on the adjacent residentially zoned property (Holabird East Apartments) shall be limited to passenger cars. Additionally, Petitioner and their tenants shall use good faith efforts to have their employees park on the off-site parking lot whenever possible.
- 3) Petitioner shall remove the paving from the right-of-way(s) and install vegetative screening along the frontage of both roads between the sidewalk area and property lines as illustrated on Petitioner's Exhibit 2. The landscaping shall be consistent with the goals and objectives contained in the Office of Planning's Zoning Advisory Committee (ZAC), dated December 8, 2008, a copy of which is attached hereto and made a part hereof. Avery Harden, Baltimore County Landscape Architect, should be consulted to obtain his advice as to the type of plantings and their precise location and obtain his approval. The plantings of such trees is to be done (weather permitting) within nine (9) months of the date of this Order. The perpetual maintenance of the landscape areas will be the responsibility of the Petitioner or its assigns.
- 4) As noted on Petitioner's Exhibit 2, Petitioner shall install a 6-foot high wood fence along a portion of the north and eastern property lines separating this area of the site from the adjacent D.R.16 residentially zoned properties.
- 5) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

IT IS FURTHER ORDERED that the portion of the Petition for Special Hearing to affirm the existing non-conforming use and to approve existing business parking in a residential zone,

are hereby DISMISSED AS MOOT.

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