

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
E side of Whitestone Road, 185 feet SW		
of the c/l of Dogwood Road	*	DEPUTY ZONING
1 st Election District		
4 th Councilmanic District	*	COMMISSIONER
(6730 Whitestone Road)		
	*	FOR BALTIMORE COUNTY
CPR Investment Properties		
<i>Petitioner</i>	*	Case No.: 2009-0192-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, CPR Investment Properties, LLC. Variance relief is requested as follows:

- From Sections 255.2 and 243.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) for a 43 foot setback in lieu of the required 75 foot setback for a front yard; and
- From Sections 255.2, 243.2 and 243.3 of the B.C.Z.R. for 5 foot and 25 foot setbacks in lieu of the required 50 foot setback for side and rear yards respectively; and
- From Section 253.4 of the B.C.Z.R. to allow commercial storage within 100 feet of a residential zone boundary; and
- For such other and futher relief as may be deemed necessary by the Zoning Commissioner for Baltimore County.

The subject property and requested relief are more fully described 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 were Michael K. O’Malley, Vice President, CPR Investment Properties, LLC, and Lawrence E. Schmidt, of Gildea & Schmidt, LLC, attorney for Petitioner. Also present was David S. Thaler, P.E., L.S., of D.S. Thaler & Associates, Inc., the engineering firm that prepared the site plan and Brian

Greenbaum, CFO of CPR Investment Properties. Rick Colbert from Baltimore County's Office of Economic Development also appeared in support of the proposal. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is a trapezoidal-shaped property, approximately 2 acres in area, split zoned B.L., M.L.-I.M. and D.R.5.5. The predominant zoning of the property is M.L.-I.M. (1.86 acres). The property is located immediately adjacent to Whitestone Road in the Woodlawn community of Baltimore County. The property is just south of the intersection of Dogwood Road and Whitestone Road. This area is predominantly commercial/industrial in character, however there is a residential community known as Woodlawn Estates located immediately to the east of the subject property. To the west and across Whitestone Road, there are commercial/industrial buildings. Moreover, the Meadows Industrial Park immediately abuts the southern property line and a gasoline station and commercial building lot are to the north. The front of those buildings face Dogwood Road and the rear abut the subject property.

The site is presently owned by CPR Investment Properties, LLC, the investment company for Concrete Protection and Restoration, Inc. ("CPR"). CPR is an industrial company which provides concrete protection and restoration services. The business of the company is to repair existing concrete structures (infrastructure) such as is in bridges, roads, parking garages, etc. In fact, the business is presently performing restoration services on Baltimore County Revenue Authority garages in Towson. The restoration and repair services are rendered at off site properties. The main office headquarters of the company is located less than one block away on Dogwood Road. As Mr. Colbert confirmed, the Company is a valued business in this area of the

County. The company employs in excess of 300 employees and had a volume of over \$30,000,000 in 2008.

The subject property is used as a staging/warehousing area for the business. Previously, the property was occupied and utilized by a moving and storage company but was acquired by the current owner in 2004. In July 2008, the property was improved with three structures. The largest was a 95 foot by 180 foot warehouse building. Within this building, machinery and equipment were stored. Two smaller buildings were also located on the property, a small storage building abutting the eastern property line and a three sided structure in the southeast corner. In addition to these structures the property also has a large macadem “yard”; where equipment and vehicles are parked/stored. In July 2008, a fire occurred on the property and as a result of this major fire, the entire warehouse building was destroyed, as was the smaller building on the east side of the property. Only the three sided building remains.

Petitioner proposes to rebuild on its site. In this regard, Petitioner has obtained a building permit (Permit No. B704330) from Baltimore County allowing it to reconstruct the warehouse building in its previous footprint. A copy of this permit was marked and accepted into evidence as Petitioner’s Exhibit 2. There are no plans to reconstruct the smaller building as it abuts the D.R.5.5 property line to the rear and would require additional zoning variance relief. The three sided building will also be razed after construction is completed. It is being retained now so that there is one covered storage area on the property while the warehouse building is re-built.

Petitioner’s plans for rebuilding are complicated by the fact that the southern side of the property abuts the Dead Run Stream. This stream generates a flood plain and application of the environmental Forest Buffer regulations contained in Title 33 of the Baltimore County Code (“BCC”). To address these regulations, Petitioner has obtained a Forest Buffer Variance from the

Department of Environmental Protection and Resource Management (“DEPRM”). A copy of the February 9, 2009 letter from Director Jonas A. Jacobson to Stacey McArthur of D.S. Thaler & Associates, Inc. granting the variance was marked and accepted into evidence as Petitioner’s Exhibit 3. This variance reduces the required buffer in order to provide a reasonable use/building area on the site, while providing protection for the stream. The property was developed before the Forest Buffer regulations were adopted and previously there was no formal forest buffer established.

In view of the site constraints associated with the stream, Petitioner proposes reconstructing the warehouse building on the same footprint as it was located prior to the fire. Additionally, two additions will be phased into that building, in lieu of rebuilding/retaining the other buildings. As a result, when all the construction is completed there will be one building on the site. The details of this are shown on the site plan accepted into evidence as Petitioner’s Exhibit 1.

Variance relief is requested from front, side and rear yard setbacks of the rebuilt building as noted above. In support of the variance, testimony and evidence was offered that the site is unique due to its unusual shape and the significant environmental constraints associated with the Dead Run Stream. Strict adherence to the Zoning Regulations would cause practical difficulty in that if all setback and buffer regulations were strictly complied with, there would be no building envelope available. The final variance relates to outside storage. In this regard, Section 253.4 prohibits commercial storage within 100 feet of a residential zone boundary. Compliance with this regulation would eliminate any use of the significant portion of the yard area of the site.

The Zoning Advisory Committee (“ZAC”) comments were received and are made part of the record of this case. Comments were received from the Office Planning dated March 6, 2009,

which states that after reviewing Petitioner's variance package, visiting the site and subsequent discussions with Petitioner's attorney and community representatives, the site is being used as a contractor's equipment storage yard and warehouse. The requested variances will allow the existing business to expand and will not impact (be any closer) to any adjacent residentially zoned properties. The Planning Office recommends approval of the variances provided the Petitioner accomplishes the following: installs an 8 foot board-on-board fence wherever the site abuts residentially zoned property, and installs compact dense evergreen screening along the outside of the proposed fence.

Petitioner indicated that following the fire its representatives have met with residential neighbors to discuss redevelopment of the site. Agreement was reached with the nearby community groups pursuant to letters exchanged between those groups and Petitioner's counsel. Reference is made to a letter dated November 19, 2008 from Mrs. Van Ross, President of the Woodlawn Community Education and Development Association, Inc. to Mr. Schmidt, a letter agreement dated February 12, 2009 from Mr. Schmidt to Dallas Griffin on behalf of the Woodlawn Estates Community Association, and an additional letter dated March 3, 2009 from Mr. Schmidt to Mrs. Van Ross. Copies of these letters were marked and accepted into evidence as Petitioner's Exhibits 4A, 4B, and 4C, respectively, and outline the agreement introduced into the record at the hearing. The agreement provides that the common property line will be landscaped with a 10 foot evergreen strip and also a board-on-board fence will be constructed. Moreover, there will be limitation in the type of storage in the yard area immediately adjacent to the residential property line such that no flammable materials will be permitted.

Considering all the testimony and evidence presented, I am persuaded to grant the variance relief. 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 fact that the main building previously existed at the site and that Petitioner is merely attempting to rebuild is compelling. The unfortunate fire that destroyed the previous buildings has created a situation where the imposition of the current Zoning Regulations on this property disproportionately impacts the subject property as compared to others in the zoning district. In addition, the aforementioned environmental constraints on the property limit Petitioner's options with regard to redeveloping the site.

I also find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. Without the requested zoning relief, Petitioner would not be permitted to construct a building of suitable size -- even as big as the building that existed previously. Finally, I find that these variance requests can be granted in strict harmony with the spirit and intent of said regulations, and in such a manner as to grant relief without injury to the public health, safety and general welfare.

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

THEREFORE, IT IS ORDERED this 24th day of March, 2009 by this Deputy Zoning Commissioner, that Petitioner's Variance requests as follows:

- From Sections 255.2 and 243.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) for a 43 foot setback in lieu of the required 75 foot setback for a front yard; and
- From Sections 255.2, 243.2 and 243.3 of the B.C.Z.R. for 5 foot and 25 foot setbacks in lieu of the required 50 foot setback for side and rear yards; and
- From Section 253.4 of the B.C.Z.R. for commercial storage within 100 feet of a residential zone boundary;

be and are hereby GRANTED, subject to the following restrictions which are conditions precedent to the relief granted herein:

1. Petitioner is advised that it may apply for any required building permits 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 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. Petitioner shall install an 8 foot high board-on-board fence along the eastern (rear) property line where the subject site abuts the residentially zoned property.
3. Petitioner shall install landscape screening along the outside of the proposed fence. The designation of the landscape material shall be at the discretion of the County's Landscape Architect.

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