

<p>IN RE: PETITION FOR VARIANCE NW corner of Turner Crossing Road and York Road 7th Election District 3rd Councilmanic District (21336 York Road)</p> <p>Grace Y. Lambert <i>Legal Owner</i></p> <p>Donald Warrener Jr. <i>Lessee</i></p>	<p>* * * * * * *</p>	<p>BEFORE THE DEPUTY ZONING COMMISSIONER FOR BALTIMORE COUNTY</p> <p>CASE NO. 2009-0220-A</p>
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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, Grace Y. Lambert, and the lessee, Donald Warrener, Jr., requesting relief as follows:

- From Section 301.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit 13 feet in lieu of permitted 4 feet for an entrance projection; and
- From Section 301.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit 40 feet in length in lieu of the permitted 10 feet for an entrance projection.

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 Petitioner Donald Warrener, Jr. and his attorney, Arnold Jablon, Esquire. Also appearing in support of the requested relief were David Flowers, land planner, who assisted in the preparation of the site plan, and David Martin with Martin & Phillips Design Associates, Inc., the landscape architect who prepared the site plan. It should be noted that Mr. Flowers has been recognized and accepted as an expert witness on land use and zoning before this Commission and was offered and so accepted in this case. There were no Protestants or other interested persons in attendance at the hearing.

The case proceeded by way of a proffer by Mr. Jablon in which the testimony and evidence revealed that the subject property is a trapezoidal-shaped property containing approximately 1.858 acres zoned B.L. (1.828± acres) and B.R.-C.M. (0.03± acre). The property is located at the northwest corner of York Road and Turners Crossing Road, just west of Interstate 83 and about one mile south of the Maryland-Pennsylvania line, in the Parkton area of northern Baltimore County. It is improved with an existing one-story tavern and package goods store (hereinafter referred to as the "tavern") of approximately 6,914 square feet. Also on the property is another separate one-story building, a hair salon, consisting of approximately 1,650 square feet, located to the west of the tavern. Mr. Warrener has a long-term lease with the owner of the property for the building in which the tavern is located. The tavern is literally located at the corner of the property, immediately adjacent to both Turners Crossing Road and York Road, as more specifically depicted on the site plan. The front of the building is to York Road and one side is to Turners Crossing Road. Parking is provided to the rear and to the opposite side of the building, immediately adjacent to York Road and north of the subject tavern, and takes up most of the property. Customers enter the site immediately from York Road or from Turners Crossing Road into the parking areas. Further testimony indicated that the building has been at this location for more than 50 years.

The purpose of the Petition is to seek variances for a covered projection extending from the building over its entranceway facing York Road, located on the northern part of the building. The projection, approximately extending 12 feet from the roof of the building into the front yard and approximately 40 feet in length, was begun without a permit. Petitioners are seeking a variance of 13 feet instead of 12 feet as shown on the site plan as a precaution so as to have a one foot leeway as construction proceeds and is consummated. In order to secure the permit, Petitioner is in need of the above-described variance relief. This entrance projection would not be enclosed, no seating

would be provided, and sole purpose is to provide protection from the weather as customers ingress and egress the tavern. Photographs of the building and the entrance projection under construction were marked and accepted into evidence as Petitioner's Exhibit 4. As shown in the photographs, the covered projection is over the single entrance into the front of the tavern.

Mr. Flowers confirmed that the site is primarily zoned B.L. -- surrounded by R.C.5 to the west and east, B.M.-C.R. to the north, and R.C.2 to the south. As shown on the official County zoning map marked and accepted into evidence as Petitioner's Exhibit 2 and the aerial photograph showing the surrounding areas previously accepted into evidence as Petitioner's Exhibit 3, there is no other B.L. zoning in the area. Located immediately adjacent to the north of the subject site is the local Post Office. The Post Office, Mr. Flowers notes, has a similar entrance projection to protect those who enter and leave as is proposed by Petitioner.

In support of the variance requests, Petitioner's attorney, Mr. Jablon, explained that the property has several unusual characteristics that drive the need for the variance relief. Most notable as shown on the site plan is the location of the tavern on the property. York Road and Turners Crossing Road intersect at the southeastern corner of the site. The location of the tavern so close to both York Road and Turners Crossing Road, as described above and shown on the site plan -- and its entrance-way historically at its present location on the building -- limit what the Petitioner may do. There is no entrance on the northern or western side of the tavern. Another unusual characteristic was noted by Mr. Flowers. As labeled on the site plan, there exists a 66 foot "turnpike easement" that extends approximately 10 feet into the subject property, or, described in another way, the property line extends approximately 10' into this easement. The Zone line extends into the middle of York Road, the centerline approximately 23' from the property line. Mr. Flowers explained that the State does not own the referenced 10 feet, but is retained by the property owner. It is presumed that should the State want to widen York Road, it would utilize

this "turnpike easement" to do so. This 10 foot area is paved, however, and from the tavern to the northern property line is part of the parking lot. As depicted in the photographs (Petitioner's Exhibit 4), a curb (with no gutter or sidewalk) runs the length of the tavern, with a pavement of approximately 10 feet extending from the curb line to the property line, as more particularly shown on the site plan. There are traffic posts erected demarking the travel lanes of York Road from the paved area of the subject site to the curb, which runs the length of the tavern. The entrance projection does not extend into or over the "turnpike easement." In addition, as noted in the Zoning Advisory Committee comments, the State Highway Administration (SHA) does not oppose the variance requests. The existence of the B.L. zoning, which was obviously intended specifically for the uses on the subject property as there is no other B.L. zoning in the area, the Post Office to the north (in the area zoned B.M.-C.R.), the size of the site, and the duration of the tavern all point to the uniqueness in a zoning sense of the property as it relates to other properties in the area.

In terms of practical difficulty, Mr. Jablon pointed out that there is nowhere else an entrance projection could be provided to protect customers. The front entrance is as shown in the photographs near York Road. It cannot be moved. Hence, the only functional location for the covered projection is where it is proposed. Mr. Jablon proffered that there would be no adverse impact from the entranceway as shown on the site plan. The operation of the tavern would not change as a result and the granting of the variance requests and would have no detrimental impact on the surrounding locale.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comments received from the Office of Planning dated March 26, 2009 indicate that it does not oppose Petitioner's request; however, should the request be granted, Petitioner should be required to add landscaping north of the existing tavern along York Road

where there is currently a large parking lot with minimal landscaping. The comments received from the State Highway Administration (SHA) dated March 10, 2009 indicate that based on their internal review, the existing access and use as shown on the site plan are consistent with State Highway Access Manual Guidelines, and SHA has no objection to approval of the variance requests.

Considering all the testimony and evidence presented, I find special circumstances or conditions exist that are peculiar to the land or structure that is the subject of the variance requests. Clearly, the subject property has constraints that are inherent to the property and have existed for a significant period of time. Its irregular, trapezoid shape, its frontage on both York Road and Turners Crossing Road, and the location of the existing, long-standing, structure on the property for at least 50 years leads me to find the property unique in a zoning sense. Furthermore, in my view, the imposition of zoning on this property disproportionately impacts the subject property as compared to others in the zoning district. I further find that the strict application of the limitations imposed by Section 301.2 of the B.C.Z.R. would cause practical difficulty and undue hardship to Petitioner.

Finally, I find that the variances 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 these variances can be granted consistent with the requirements of Section 307.1 of the B.C.Z.R., as interpreted 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 requests should be granted.

THEREFORE, IT IS ORDERED this 6th day of May, 2009 by this Deputy Zoning Commissioner, that Petitioner's Variance requests as follows:

- From Section 301.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit 13 feet in lieu of permitted 4 feet for an entrance projection; and
- From Section 301.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit 40 feet in length in lieu of the permitted 10 feet for an entrance projection,

be and are hereby GRANTED. The relief granted herein shall be subject to the following:

1. 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 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 add minimal landscaping as determined by Avery Hardin, the County Landscape Architect, to be located (a) in the island barrier, which is shaped as a half moon and is more particularly shown on the site plan (Petitioner's Exhibit 1), to the north of the existing tavern along York Road; and (b) along the length of the entrance projection (40 feet) and inside the existing curb, and such landscaping need not extend above the railing as is more particularly shown on photographs (Petitioner's Exhibit 4).

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