

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
W/S Reisterstown Road, (MD Rt. 40) SW		
Corner of Reisterstown & Sudbrook Lane	*	ZONING COMMISSIONER
(1114-1116 Reisterstown Road)		
3 rd Election District	*	OF
2 nd Council District		
	*	BALTIMORE COUNTY
LAT, LLC		
Owner/Petitioner	*	Case No. 2009-0305-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by Timur Yusufov, managing member of the property owner, LAT, LLC, by and through their attorney, Deborah C. Dopkin, Esquire. The Petitioner requests variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: (1) Section 232.1, to permit a front yard setback of zero (0) feet in lieu of 10 feet required; (2) Section 232.2.B, to permit a side yard setback on a street corner side of zero (0) feet in lieu of 10 feet required; (3) Sections 409.6.A.2 and 409.6.B.3, to permit 25 parking spaces in lieu of 36 required; (4) Section 409.8.A.4, to permit a setback of 1 foot from a parking space to the right-of-way line of a public street in lieu of 10 feet required; (5) Section 409.B.A.1, and Condition B, Item B.1.b of the Baltimore County Landscape Manual, to permit a zero (0) foot landscape buffer between adjoining paved surfaces in lieu of 6 feet required. The property and requested relief are more particularly described on the amended site plan marked and accepted into evidence as Petitioner’s Exhibit 2.

Appearing at the requisite public hearing in favor of the variance requests on behalf of the Petitioner were Timur Yusufov and Jeffrey Neuman; Kenneth J. Colbert, P.E., land planner and engineer with Colbert, Matz, Rosenberg, Inc., who prepared the site plan for this property.

Also appearing in favor of the requests were Deborah C. Dopkin, Esquire, attorney for Petitioner, John P. Chalk, the licensed architect who prepared the architectural details; Sherrie Becker, Executive Director of the Pikesville Chamber of Commerce, and Diane Itter, the Senior Planner for the 2nd District with the Office of Planning. It should be noted that there were no adverse Zoning Advisory Committee (ZAC) comments received from any of the County reviewing agencies.

Appearing in opposition to the request were Isaac and Mary Lacotti, nearby neighbors, Sara Glik, Secretary of the Ralston Community Association, and Lorna Diaz, President of the Ralston Association. There were no other interested persons in attendance.

The Petitioner's counsel, Ms. Dopkin, offered Kenneth J. Colbert, a registered professional engineer, as an expert and had him introduce the site plan. Testimony and evidence offered revealed that the subject property consists of two parcels (Parcel 100 is 9,859 square feet in area and Parcel 101 is 7,140 square feet) forming a rectangular shaped lot with frontage on the southern corner of Reisterstown Road and Sudbrook Lane and Sudbrook Lane and Derisio Lane bordering the rear of the property in Pikesville. The intersection of Reisterstown Road and Sudbrook Lane is a signalized intersection. The combined properties contain a gross area of 0.39 acres, more or less, zoned B.L. The property is currently improved with existing commercial buildings that have served the area as various restaurant and retail uses. Most recently, the Backfin restaurant operated at this location. The property is served by public utilities and transportation.

Further testimony disclosed that the property is located in the heart of the Pikesville Revitalization Area and thus subject to the requirements of the Pikesville Commercial Revitalization Guidelines, an excerpt of which was accepted into evidence as Petitioner's Exhibit

7. Moreover, the properties improvements are subject to review by the Design Review Panel (DRP). The DRP reviewed and approved the proposed construction of a two-story building for retail (ground floor) and offices (second floor) on July 8, 2009, and noted that the plan is consistent with the requirements of the Pikesville Commercial Revitalization Guidelines. It is important to note that this Hearing Officer is bound by the recommendations and design approvals of the DRP.

Prior to introducing the proposed architectural details and explaining the requested variance relief, Mr. Colbert indicated that since these variance requests are substantially driven by the property's location in the Pikesville Revitalization Area, it was important to understand the overwhelming commercial nature of this stretch of Reisterstown Road. Photo exhibits submitted into evidence as Petitioner's Exhibits 4A-C depicts these surrounding uses. These photos confirm this strip of Reisterstown Road to be comprised of restaurants, retail uses, and public facilities such as a public library, state police barracks, crime lab, a golf course, a local bank branch, a dry cleaner, and numerous other retail stores and restaurants. The aerial photo exhibit submitted as Petitioner's Exhibit 3 further corroborates the 'Main Street' commercial atmosphere of the area surrounding the subject property. Mr. Colbert, pointing to Petitioner's Exhibit 3, noting that the closest residence to the subject property is approximately 180 feet away.

The Petitioner proposes to raze the existing commercial buildings known as 1114 and 1116 Reisterstown Road and construct a two-story, retail and office building (100' x 52'). The new building will contain 5,578 square feet for each respective floor. As indicated, the first floor of the building will be for retail purposes and the second floor will serve as offices. Mr. Colbert indicated that the only contract lessee for the property so far is a local pharmacy for the

bottom/retail floor. Mr. Colbert stated that this property was designed based on the Pikesville Revitalization Guidelines and the recommendations of the Design Review Panel. These guidelines and recommendations included closing the entrance to the property on Reisterstown Road, thereby making the sole ingress/egress for the property on Derisio Lane. Further, the DRP requested that the building façade be made even with the sidewalk along the length of the property's Reisterstown Road frontage and 64 feet of the property's Sudbrook Lane frontage pursuant to the purpose of the Pikesville Revitalization Guidelines, invigorating the Pikesville Area by establishing a 'Main Street' feel along Reisterstown Road. Sidewalks will be installed surrounding the property thereby making the property pedestrian accessible. The developer further plans to provide ample streetscape plantings and landscaping that will be maintained by the Pikesville Chamber of Commerce. The landscape plan for the property was accepted into evidence as Petitioner's Exhibit 5. Mr. Colbert opined that this plan meets the aforementioned standards by enhancing the commercial vitality of the community and helping to create an inviting urban environment.

Mr. Colbert opined that if this property were not subject to the Pikesville Revitalization Area Guidelines or the mandated recommendations of the DRP, the property could be designed without variance relief. However, since the property is subject to these aforementioned requirements, variance relief is necessary. Mr. Colbert explained the shared parking calculations and noted the pertinent setback distances to the property line and right-of-way lines. The shared parking tabulation is located on the site plan accepted into evidence as Petitioner's Exhibit 2.

Testifying in support of the variance requests, Diane Itter, Senior Planner for the 2nd District, opined that this plan is compliant and in accordance with the guidelines for the Pikesville Commercial Revitalization Area, an urban village along the 800-1400 blocks of

Reisterstown Road. Ms. Itter, who has been with the Office of Planning for 34 years, noted that these guidelines are very specific and were established after significant community input in order to establish a 'walkable,' more inviting Pikesville. The overall goal of the revitalization plan was to bring more people to the 'Main Street' core of Pikesville thereby enabling customer and revenue sharing. Ms. Itter stated that the proposed building plan perpetuates these said purposes and initiatives.

Also testifying for the Petitioner was John Chalk, the licensed architect who designed the proposed building. Mr. Chalk opined that the design of the building meets the Pikesville Commercial Revitalization Guidelines for architecture and the comments and recommendations of the DRP. The Petitioner submitted into evidence a front and rear rendering of the proposed building as Petitioner's Exhibits 8 and 9 respectively. The Petitioner offered that these renderings as well as the architectural elevations submitted into evidence as Petitioner's Exhibit 10, depict a visually pleasing building that will add to the aesthetics of the Pikesville 'Main Street' area.

The Petitioner concluded by saying that the subject property's location along Reisterstown Road in the designated revitalization area renders the property unique. It is due to this location that mandated compliance with the Pikesville Commercial Revitalization Guidelines and the recommendations of the DRP is necessary. Otherwise, the subject property could be designed to strictly comply with the zoning regulations. Further, the corner site location of the subject property contributes to the property's uniqueness in a zoning sense. Moreover, if the requested relief is not granted and strict compliance with the zoning regulations is required, the Petitioner would suffer practical difficulty and unreasonable hardship. Without variance relief for the requested setbacks and parking plan, the property could not comply with the mandated guidelines of the Pikesville Commercial Revitalization area and the Petitioner would not receive

the use of its property to which it is legally entitled. Counsel for Petitioner closed by saying that proposed building will bring more people to the 'Main Street' core of Pikesville, thereby furthering the objective of the Pikesville Commercial Revitalization Guidelines. This position was corroborated by the County's Department of Economic Development as indicated by Peirce Macgill. *See* Petitioner's Exhibit 11.

The main issue of the Protestants involves the subsequent safety of drivers and pedestrians alike if the variance requests are granted. Their concern was that the sight lines currently are extremely hazardous and that the proposed location of the building would only exacerbate these conditions. Petitioner's engineer stated that the proposed sight lines comply with the applicable regulations and had been reviewed and approved by the State Highway Administration. Further, the Petitioner noted that the proposed building improves the current conditions at the intersection by eliminating the ingress/egress on Reisterstown Road and adding pedestrian sidewalks. Moreover, the deck of the existing restaurant at the subject property actually extends much further towards the right-of-way of MD Rt. 140 than the proposed building. The Petitioner stated that these improvements alleviate the existing hazards at the intersection. Moreover, the Petitioner reiterated that but for the Pikesville Commercial Revitalization Guidelines the proposed building could meet the requisite setback requirements delineated in the B.C.Z.R.

Based upon testimony and evidence offered, I find that the Petitioner has satisfied the requirements of Section 307.1 of the B.C.Z.R., as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995), for relief to be granted. The property's location between the 800-1400 blocks of Reisterstown Road renders the property subject to the overriding mandates of the Pikesville Commercial Revitalization Guidelines and thereby unique. The property's corner site location

further constrains development. These special circumstances and conditions drive the need for variance relief. Strict application of the zoning regulations would result in practical difficulty and unreasonable hardship for the Petitioner as refusal of the variance requests would render the Petitioner unable to develop its property. I find that the requested relief can be granted without injury to the nearby residential community and that the proposed building will benefit the long-term goals for the revitalization of the Pikesville commercial area. This building was designed in accordance with requisite guidelines and was approved by the DRP. As mentioned, this hearing officer is bound by the recommendations and decisions of the DRP. Although I appreciate the concerns of the citizens in attendance, the variance requests are driven by conditions, the revitalization guidelines, which the Pikesville community itself created. By adding sidewalk and removing the Reisterstown Road ingress/egress, the building plan enhances the 'Main Street' feel desired and alleviates some of the hazards alluded to by the interested citizens. Therefore, I find that the building as proposed, will be a benefit to the surrounding neighborhood and the economic development goals of Pikesville and the County. Accordingly, the requested relief is considered as being within the spirit and intent of the B.C.Z.R.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 17th day of August 2009 that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: **(1)** Section 232.1, to permit a front yard setback of zero (0) feet in lieu of 10 feet required; **(2)** Section 232.2.B, to permit a side yard setback on a street corner side of zero (0) feet in lieu of 10 feet required; **(3)** Sections 409.6.A.2 and 409.6.B.3, to permit 25 parking spaces in lieu of 36 required; **(4)** Section 409.8.A.4, to permit a

setback of 1 foot from a parking space to the right-of-way line of a public street in lieu of 10 feet required; (5) Section 409.B.A.1, and Condition B, Item B.1.b of the Baltimore County Landscape Manual, to permit a zero (0) foot landscape buffer between adjoining paved surfaces in lieu of 6 feet required, in accordance with Petitioner's Exhibit 2, be and is hereby GRANTED subject to the following:

1. The Petitioner may apply for its building permit(s) and be granted same upon receipt of this Order; however, the 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, for whatever reason this Order is reversed, the relief granted herein shall be rescinded.
2. The schematic landscape plan must be approved by the County Landscape Architect, Avery Harden, and the Office of Planning.
3. Petitioner must obtain State Highway Administration (SHA) Access Permit approval prior to ingress/egress improvements and abide by the SHA comments dated June 4, 2008.
4. Special Hearing relief is required for the occupancy of the proposed office building tenant spaces for medical office(s) as such a use would adversely impact available parking approved by this Order.

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

WJW:dlw/esl

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