

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
S side of Baltimore National Pike; SW corner of Baltimore National Pike and Geipe Road *		DEPUTY ZONING
1 <sup>st</sup> Election District		
1 <sup>ST</sup> Councilmanic District	*	COMMISSIONER
(6333 Baltimore National Pike)		
	*	FOR BALTIMORE COUNTY
<b>6333 Baltimore National Pike, LLC</b>		
<i>Legal Owner</i>	*	
<b>Patient First Corporation</b>		<b>CASE NO. 2010-0002-A</b>
<i>Contract Purchaser</i>	*	

\* \* \* \* \*

**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, 6333 Baltimore National Pike, LLC and contract purchaser, Patient First Corporation. Petitioner is requesting Variance relief from Section 238.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side yard setback of 12 feet in lieu of the required 30 feet and a rear yard setback of 19 feet in lieu of the required 30 feet. The subject property and requested relief are more fully depicted on the revised 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 were Jay Lustig, Director of Planning and Development for Petitioner Patient First Corporation, the contract purchaser, and Deborah C. Dopkin, Esquire, counsel for Petitioner. Also appearing in support of the requested relief was Timothy F. Madden with Morris & Ritchie Associates, Inc., who prepared the site plan for the subject property, and Lori Rogers with the Baltimore County Department of Economic Development. There were no Protestants or other interested citizens in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is an irregular, trapezoid-shaped parcel that contains approximately 0.656 acre, more or less, zoned B.R.-C.C.C.

The subject property is located on the south side of Baltimore National Pike (U.S. 40), a principle arterial divided state highway, and on the southwest corner of the intersection of Baltimore National Pike and Geipe Road in the Catonsville area of western Baltimore County. In addition, the subject property sits approximately 250 feet west of the intersection of Baltimore National Pike and Rolling Road, a major commercial intersection.

Further testimony and evidence was provided by Mr. Madden, who designed and prepared the site plan. His resume was marked and accepted into evidence as Petitioner's Exhibit 5 and he was accepted as an expert in land development, planning, landscape architecture, and interpretation of the Baltimore County Zoning Regulations. Mr. Madden indicated that the subject property is currently vacant but there have been various prior commercial uses on the property. Mr. Madden pointed to site photos marked and accepted into evidence as Petitioner's Exhibit 3 to identify the current state of the subject property and surrounding businesses. On Petitioner's Exhibit 3, Photo 1-C shows a car wash adjacent to the rear of the property, Photo 1-B shows an auto body shop located to the east of the property on the other side of Geipe Road, and Photo 2-A shows a local bank branch to the west of the subject property. The surrounding area can further be viewed from an aerial photograph that was marked and accepted into evidence as Petitioner's Exhibit 2.

In continuing to describe the subject property, Mr. Madden pointed to its topography and referred to Photo 3-A on Petitioner's Exhibit 3 to show the steep slope on the western edge of the subject property. Mr. Madden offered his opinion that this extreme sloping contributes to the uniqueness of the property and creates practical difficulty and undue hardship in the development of the land. It was further noted that the subject property is served by public

utilities and services, as well as available public transportation with numerous bus stops located nearby on Geipe Road and Rolling Road.

Mr. Madden testified that the contract purchaser, Patient First Corporation, desires to construct a new Patient First medical services center on the subject property. Mr. Madden indicated that the proposed building, consisting of approximately 6,300 square feet, would be aesthetically pleasing and would be a welcome addition to the Baltimore National Pike commercial corridor. As shown in the architectural rendering marked and accepted into evidence as Petitioner's Exhibit 4, the proposed Patient First building will be visually pleasing, using glass and other materials and architectural features to aid in creating a streamlined appearance. Mr. Madden also indicated that although there are two current street entrances to the property, the entrance located on Baltimore National Pike is to be closed off with curb and gutter and a landscape buffer and sidewalk, making the entrance from Geipe Road the sole means of ingress and egress for the subject property. The current entrance is seen in Photo 1-A on Petitioner's Exhibit 3 and the proposed means of ingress and egress on Geipe Road is also shown on the site plan. In addition, the large car wash sign -- clearly visible in Photos 1-A and 1-B of Petitioner's Exhibit 3 -- will be replaced with a much smaller, less intrusive and visually appealing Patient First sign, as shown on the architectural rendering marked and accepted into evidence as Petitioner's Exhibit 7. Mr. Madden also noted that the development of this property would result in a 16% decrease in impervious surfaces.

Further, Mr. Madden offered his expert opinion that granting the variance request in order to permit the development of the subject property would be consistent with the 2010 Master Plan for commercial corridors, and within the spirit and intent of the B.C.Z.R. Ms. Dopkin submitted an excerpt from the 2010 Master Plan regulating land use of commercial

corridors adjoining Baltimore County's major arterial highways, which was marked and accepted into evidence as Petitioner's Exhibit 6. Two policies noted in the Master Plan are (1) to address common traffic and parking issues, including consolidating curb cuts, and (2) improving the appearance of properties within commercial corridors. Mr. Madden noted that Baltimore National Pike (U.S. 40) is a major arterial highway. He opined that eliminating the Baltimore National Pike entryway to the property and replacing it with curb and gutter and sidewalk, combined with the proposed aesthetic improvements to the property in connection with the proposed development and the addition of an important business serving the surrounding local community, meets the aforementioned Master Plan initiatives and requirements.

Jay Lustig, Director of Planning and Development for Patient First Corporation offered testimony regarding the proposed use of the subject property. He indicated that Patient First is a walk-in medical services facility that operates on a non-appointment basis. In Maryland, Patient First has eleven locations including four in Baltimore County as shown on the location map that was marked and accepted into evidence as Petitioner's Exhibit 9. The facility is open 365 days a year from 8 a.m. to 10 p.m. Mr. Lustig noted that it is Patient First's intention to open the subject location in the Fall 2010. A Patient First brochure outlining the company's mission and services was marked and accepted into evidence as Petitioner's Exhibit 8.

In concluding its presentation, Petitioner opined that the subject property is unique and that strict compliance with the B.C.Z.R. would cause practical difficulty and undue hardship. Ms. Dopkin stated that the property is unique because of its location in a designated commercial corridor, thus necessitating compliance with the 2010 Master Plan requirements; the corner site location of the subject property, thereby creating an irregularly shaped parcel and constraining the property's development capabilities; frontage on Baltimore National Pike; and the steep,

dramatic sloping of the western portion of the property. Ms. Dopkin indicated that these circumstances render the property unique and if forced to strictly comply with the zoning regulations, would create practical difficulty and undue hardship for Petitioner.

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 August 3, 2009, which recommends that certain restrictions should be placed on approval of the variance request. These restrictions relate to building elevations being reviewed by that Office prior to issuance of any building permits, that the County Landscape Architect review and approval all landscaping and lighting, and that a sidewalk be provided along the entire Geipe Road frontage as well as a sidewalk connection from the building entrance to the public sidewalk. Comments were received from the Bureau of Development Plans review dated July 27, 2009, which indicates that permanent structures may not be built in a drainage and utility easement. Petitioner shall either apply to the County for release of the easement or revise the site plan to remove all permanent structures from the easement. Further, a comment from the Maryland State Highway Administration dated July 22, 2009, indicates that the subject property is located in a designated commercial corridor and that closing of the existing U.S. 40/Baltimore National Pike entrance may be required, for which an access permit is necessary. In response to these ZAC comments, Ms. Dopkin and Mr. Madden indicated that Petitioner would comply with the conditions recommended by the various Baltimore County agencies.

Considering all the testimony and evidence presented, I am persuaded to grant the requested variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. In particular, the subject property has several constraints, including its irregular shape and corner site location, which pose

limitations on Petitioner's development options, and render the property unique in a zoning sense. Further, the property's location along a commercial corridor subjects the property to the requirements and policies of the 2010 Master Plan for commercial corridors. Clearly, this property's uniqueness -- combined with Petitioner's desire to move the proposed building further back from the busy highway -- drives the need for the variance. Moreover, if strict compliance with the zoning regulations for the property were required, Petitioner would suffer practical difficulty and undue hardship.

I further find that the variance 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. The proposed Patient First medical services facility will provide an important service to the surrounding local community and contain attractive architectural features improving the aesthetics of the Baltimore National Pike commercial corridor. Thus, I find that the variance can be granted in such a manner as to meet 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 request should be granted.

THEREFORE, IT IS ORDERED this 13<sup>th</sup> day of August, 2009 by this Deputy Zoning Commissioner, that Petitioner's request for Variance relief from Section 238.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side yard setback of 12 feet in lieu of the required 30 feet and a rear yard setback of 19 feet in lieu of the required 30 feet be and is 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 provide a sidewalk along the entire Geipe Road frontage and a sidewalk connection from the building entrance to the public sidewalk.
3. Building elevations shall be submitted to the Office of Planning for review and approval prior to the issuance of any building permits.
4. Avery Harden, Baltimore County Landscape Architect, shall review and approval all landscaping and lighting.
5. In accordance with State Highway Access Manual guidelines, Petitioner must file an application and plan package with the State Highway Administration (SHA) in order to receive a permit for improvement of the entrance along Baltimore National Pike (U.S. 40).
6. As to the existing 10 foot drainage and utility easement running along the west side of the property, Petitioner shall either apply to Baltimore County for release of the drainage and utility easement or shall revise the site plan to remove all permanent structures from the easement.

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