

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
SE corner of York Road and Fairmount Avenue	*	DEPUTY ZONING
9 <sup>th</sup> Election District	*	COMMISSIONER
5 <sup>th</sup> Councilmanic District (York Road)	*	FOR BALTIMORE COUNTY
<b>Ronald Kelbaugh and Deborah Sparks</b>	*	
<i>Legal Owners</i>	*	
<b>937 York Road, LLC</b>	*	<b>CASE NO. 2010-0046-A</b>
<i>Contract Purchaser</i>	*	

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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 owners of the subject property, Ronald Kelbaugh and Deborah Sparks, and the contract purchaser, 937 York Road, LLC. Petitioners are requesting Variance relief from Sections 238.2, 409.6, 409.8.A.1 and 409.8.A.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows:

- To allow a proposed rear building setback of 10 feet and side building setback of 20.4 feet in lieu of the required 30 feet for each; and
- To permit off-street parking with setbacks as close as 1.2 feet in lieu of 10 feet to a street right-of-way with required landscaping to be approved as determined by the Zoning Commissioner; and
- To permit 42 parking spaces in lieu of the required 62 spaces.<sup>1</sup>

The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the variance requests were David Schlachman on behalf of Petitioner 937 York Road, LLC, and Francis X. Borgerding, Jr.,

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<sup>1</sup> During the hearing, Petitioner's attorney, Mr. Borgerding, indicated that the original parking plan had been reconfigured and also the square footage of floor space for the proposed building had been recalculated so that a variance from the parking requirements was no longer necessary; hence, Mr. Borgerding withdrew this variance request.

Esquire, attorney for Petitioner. Also attending was Michael J. Ertel with M.J. Consulting, Inc., the professional engineer who prepared the site plan. The case also garnered significant interest from the community and a number of nearby neighbors and interested citizens attended the hearing as well. Their names and addresses are listed on the “Citizen’s Sign-In Sheet” contained within the case file.

Testimony and evidence offered revealed that the subject property is irregular-shaped and consists of approximately 33,192 square feet or 0.762 acre, more or less, zoned B.R. The property is located at the southeast corner of York Road and Fairmount Avenue, just north of the Towson Bypass (Bosley Avenue), in the Towson area of Baltimore County. The property is situated in a commercial corridor of York Road in the northwest Towson area, with retail stores, fuel service stations, automotive service stations, a car wash, fast food and similar restaurants, a liquor store, and dry cleaner. The property also backs up to a residentially zoned (D.R.10.5) area consisting of a mature neighborhood of row homes, and is also near newer infill development consisting of apartment and condominium buildings. The subject property is improved with a commercial style building and parking areas and currently serves as an auto repair service garage, a paint shop, and pit beef shop. The property was at one time a fuel service station and was recently the home of Brooks Huff Tire Company of Towson, Inc.<sup>2</sup> As shown on the photograph that was marked and accepted into evidence as Petitioner’s Exhibit 2, a small park with several mature trees is also located at the northwest corner of the property at the aforementioned intersection.

At this juncture, Petitioner desires to redevelop the property by razing the existing structures and constructing a “Walgreens” pharmacy and convenience store on the site. In order

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<sup>2</sup> Brooks Huff has since moved a few blocks south to 909 York Road where it operates its tire and automotive repair service business.

to do so, Petitioner retained Mr. Ertel, a professional engineer, to evaluate the property for use as a drug store and to prepare the site plan that would address the building location, parking, and site development issues. Following Mr. Ertel's evaluation, it was determined that certain variances would be needed, primarily as a result of existing right-of-way issues, the proximity to the residential community to the east, and the setback requirements of the B.R. Zone.

In support of the variance requests, Mr. Ertel indicated that Petitioner proposes a 8,580 square foot one-story building with a lower level storage area/stockroom consisting of 3,780 square feet.<sup>3</sup> Like most of the buildings on the east side of York Road in the immediate area, the Walgreens building would be situated closer to the alley way than to York Road. As shown on the site plan, Petitioner proposes an entrance/exit off York Road, as well as an entrance/exit off the 20 foot wide alley way adjacent to the property. Petitioner originally proposed a right turn/left turn exit out of the property onto York Road, but has now eliminated the left turn exit due to traffic concerns expressed by the State Highway Administration. A drive-thru is also proposed for the south side of the building, to be used primarily for prescription drop-offs and pick-ups. The drive-thru would have the required number of stacking spaces and would depart the store via the alley way, making either a left (to Fairmount Avenue) or right turn (to Bosley Avenue). As also shown on the site plan, multiple areas of parking are planned for the site, with 43 spaces provided.

In addition, Petitioner's landscape plan and revised site plan, which were marked and accepted into evidence as Petitioner's Exhibits 3 and 4, respectively, show the proposed landscaping for the property. Highlights of the landscaping include the planting of large deciduous trees and shrubs along the property's frontage on York Road. A decorative wall and

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<sup>3</sup> As filed, Petitioner proposed a second story for an upper level storage area/stockroom, however, this was changed in favor of a lower level basement area. In addition to negating the need for a second floor, this change also solved the parking issues by reducing the number of spaces required and thus obviating the need for the parking variance.

fence is also proposed along York Road and Fairmount Avenue. Elevation drawings of the proposed building were marked and accepted into evidence as Petitioner's Exhibit 5 and depict an attractive commercial style building with a mix of brick and decorative block facades.

As to the variances specifically, Mr. Ertel explained that Petitioner is need of relief from the side and rear yard setbacks for the proposed building. As planed, the building would sit 10 feet from the rear lot line along the alley way and residential row homes, and 20 feet from the side lot line to the adjacent Texaco fuel service station, in lieu of the required 30 feet. The 10 foot distance from the rear lot line is necessary in order to configure the property for adequate on-site parking, and to place the building in a line similar to other buildings along York Road, as is the 20 foot distance to the side lot line. Although the current building is situated right at the lot line next to the Texaco station, and the planned 20 foot setback would be a marked improvement from what exists now, a variance is still necessary. As to the request for off-street parking with setbacks as close as 1.2 feet in lieu of 10 feet to a street right-of-way, this relief is driven by the 10 foot landscape strip required along York Road, and is also the result of providing the required off street parking.

As indicated previously, a number of neighbors and interested citizens attended the hearing and several voiced their concerns over the project. In general, the community did not voice objections to the proposal to redevelop the property and the related variance requests; however, as is often the case when commercial redevelopment is so close to existing residences, the community did express concerns over issues such as traffic, parking, noise, trash, and lighting. In particular, Nancy Pivec testified in her capacity as President of the Towson Park Residential Development, which encompasses the 189 row homes located directly behind the proposed development. Again, her community is not opposed to the project, per se, but does

want certain conditions attached to the granting of any zoning relief, including restrictions on trash pickup and delivery times, traffic control, a wall or fence to mitigate the impact of headlights from cars waiting at the drive-thru, improvements to the alley by Petitioner, and limits on the brightness of outdoor lighting. Ms. Pivec also submitted a letter dated October 5, 2009 from Edward Kilcullen, Jr., President of the Greater Towson Council of Community Associations, Inc., which was marked and accepted into evidence as Community Exhibit 1, and adopts the position of Towson Park Residential Development.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Bureau of Development Plans Review dated August 19, 2009 which indicates that they have no objection to granting the requested variances. However, if Petitioner does not acquire the narrow strips of land along York Road and Fairmount Avenue from Baltimore County and Towson Park, Inc., in their view the variances are void. Comments were received from the Office of Planning dated September 10, 2009 which indicates that they cannot recommend approval of Petitioners' request as the site falls within the boundaries of the Towson Design Review Panel Area. The Baltimore County Code in Section 32-4-203(i)(2) states: "The Panel's recommendation is binding on the Hearing Officer and on the agencies under subsection (1) of this section, unless the Hearing Officer or agencies find that the Panel's actions constitute an abuse of its discretion or are unsupported by the documentations and evidence presented." Nonetheless, the Planning Office indicates that certain issues shall be addressed, which include improving the sidewalks along York Road and Fairmount Avenue, provide a landscape plan for this area, indicating on the plan the times when deliveries are made, providing documentation of no opposition from adjacent residential property

owners, submitting architectural elevations and building materials for review, and providing details on the dumpster enclosure.

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. The subject property is in close proximity to several different residential zoning classifications, including D.R.5.5 and D.R.10.5, but also sits in a well developed commercial corridor just north of downtown Towson. The current building on the property was built in 1946 and was added onto by at least 1957 according to Mr. Ertel's investigation into the property. As a result, the current building is a rather unattractive, whitewash garage style building that essentially overwhelms the property and has few if any redeeming aesthetic qualities, especially when viewed in light of the recent commercial improvements to this area of York Road. Indeed, this site is ready for a new, more commercially appropriate use that would benefit the community as a whole. Although there is a CVS Pharmacy just across the street on the northeast side of Fairmount and York Roads, it appears the proposed Walgreens would provide additional pharmacy and convenience store services, not to mention potential healthy competition to the existing CVS. In my view the variance requests are driven by the setback requirements of the B.R. Zone, as well as the limited amount of space along York Road once internal parking and circulation issues are addressed. They are also driven by the desire for consistency in terms of the placement of the proposed building further from the road -- in line with other commercial buildings along York Road.

Hence, I conclude that the subject property is unique in a zoning sense and that Petitioner would suffer practical difficulty and undue hardship if the variance requests were to be denied. Strict compliance with the Zoning Regulations would "pinch" the placement of the building and

essentially render the property commercially useless. I further find that the variance requests 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.

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 Petitioners' variance requests should be granted. I will, however, attach certain conditions to the granting of relief in order to address some of the concerns expressed by the community and the potential impact that this redevelopment would have on the nearby residences.

THEREFORE, IT IS ORDERED this 16<sup>th</sup> day of November, 2009 by this Deputy Zoning Commissioner, that Petitioner's Variance relief from Sections 238.2, 409.6, 409.8.A.1 and 409.8A.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows:

- To allow a proposed rear building setback of 10 feet and side building setback of 20.4 feet in lieu of the required 30 feet for each; and
- To permit off-street parking with setbacks as close as 1.2 feet in lieu of 10 feet to a street right-of-way with required landscaping consistent with the landscape plan and revised site plan that were accepted into evidence as Petitioner's Exhibits 3 and 4, respectively,

be and are hereby **GRANTED**, subject to the following:

1. Petitioners are advised that they may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioners shall improve the sidewalks along York Road and Fairmount Avenue and provide a detailed landscape plan consistent with Petitioner's Exhibits 3 and 4. This plan shall include a brick banding along the sidewalk. A vegetative buffer in combination with ornamental iron fencing with brick piers or a brick wall is highly recommended.

3. Deliveries to the store shall be permitted only from 6:00 AM to 9:00 AM, except none on Sunday mornings, and shall not be made during peak rush hour times in the evening. Trash pickup shall be permitted only from 6:00 AM to 7:00 PM, also none on Sunday mornings.
4. Petitioners shall improve the alley way proposed for egress and ingress to a level that will accommodate traffic entering and exiting the property, as approved by Baltimore County.
5. Petitioners shall submit architectural elevations to the Office of Planning including materials for all facades of the proposed building as well as elevations of all signage for the proposed establishment.
6. Petitioners shall provide details of the dumpster enclosure to the Office of Planning. The enclosure shall utilize the same building materials as the proposed building.
7. If requested by the residential community, Petitioners shall erect a new fence along the properties adjacent to the alley way (a wooden, possibly board-on-board fence as determined by the Office of Planning) in order to provide a buffer from traffic and noise.
8. Lighting shall be provided to illuminate the site, but in such a manner that it shines away from the adjacent residential community, and also at a candle level to be approved by the Office of Planning or other applicable County agency.

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