

**IN RE: PETITIONS FOR SPECIAL HEARING \* BEFORE THE**  
**AND VARIANCE \* DEPUTY ZONING**  
 SW side of King Avenue; 337 feet NW of \*  
 Franklin Square Drive \*  
 14<sup>th</sup> Election District \* COMMISSIONER  
 6<sup>th</sup> Councilmanic District \*  
 (King Avenue) \* FOR BALTIMORE COUNTY

**Cignal Corp. \* Case No. 2010-0053-SPHA**  
*Petitioner* \*

\* \* \* \* \*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by Joe Maranto, Authorized Representative, on behalf of the legal property owner, Cignal Corp. Petitioner is requesting Special Hearing relief in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows:

- To confirm that the building height of the proposed Class B Office Building is in accordance with Sections 207.4 and 206.4.C.6 of the B.C.Z.R.; and
- To confirm that the Hearing Officer finds the Development Plan is approved and the buildings and the site proposed herein conform to that Development Plan in accordance with Section 208.1 of the B.C.Z.R.; and
- For a waiver to permit construction of a parking facility in a riverine floodplain pursuant to Section 500.6 of the B.C.Z.R. and Sections 3112.00 and 3112.2 of the Baltimore County Building Code, and Sections 32-4-107, 32-4-404, 32-4-414, and 32-8-301 of the Baltimore County Code (B.C.C.) which (a) will result in no adverse off-site impact to adjoining properties and (b) will not result in flow depth increase of greater than half of a foot.

Petitioner is also requesting Variance relief from Section 206.4.C.1, as referenced by Section 207.4 of the B.C.Z.R., to permit Class B Office Building setbacks of 91 feet for proposed Building A and 106 feet for proposed Building B in lieu of the required setbacks of 108 feet and 108 feet, respectively, (two times the height of the buildings – 54 feet). The subject property and

requested relief are more fully described on the revised site plan that was marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing on behalf of Petitioner Cignal Corp. were Lawrence E. Schmidt, Esquire and Jason T. Vettori, Esquire, attorneys for Petitioner. Also appearing in support of the requested relief were Matthew Sichel and Nicole Formoso with KCI Technologies, Inc., the engineers who prepared the original site plan that was filed with the Petitions and the revised site plan that was accepted into evidence at the hearing. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence proceeded by way of a proffer from Mr. Schmidt and Mr. Vettori, and testimony from Petitioner's Engineer, Mr. Sichel, and revealed that the subject property is irregular-shaped and contains approximately 8.87 acres zoned O-3, which is an office park designation that permits high intensity office uses. While it can best be characterized as a corner lot with frontage on King Avenue and Franklin Square Drive, there is a notched cut-out at the corner, as Petitioner does not own the properties abutting the confluence of those two public roads. Presently, the property is unimproved. As illustrated on the revised site plan, Petitioner is proposing to construct two four-story medical office buildings. Building A is to be located at the southwestern corner of the property. Building B is to be located at the eastern/southeastern corner of the property.

Mr. Sichel testified and was offered and accepted as an expert in engineering, site design, and interpretation of the Zoning Regulations. He indicated that the location and orientation of Buildings A and B and the parking facility are a result of, among other factors, the unique shape of the property. He further testified that the property is unique as a result of its topography and the existence of environmental features, including the 100 year floodplain and a forest buffer

generated from same. He also noted that the amount of frontage on the public roads is limited. These unique features squeeze the buildable area of the site. In addition, he testified that the property was an issue during the recent 2008 Comprehensive Zoning Map Process (CZMP) where the property was rezoned from D.R.5.5 to the present O-3, which evidences the intent of the County Council to have office/high intensity use at the subject site.

The O-3 Zone, as set forth in Section 207.2 of the B.C.Z.R., was established to provide for office park development, with the intent that no residential uses be permitted, particularly in areas where residential and office uses are incompatible with one another. The subject property appears to have been zoned to O-3 in 2008 for the express purpose of permitting an office park type of development. After filing the Development Plan, the Petitions for Special Hearing and Variance were filed. The use regulations and performance standards in O-3 Zones are the same as those which are applied in the OR-2 Zone, as set forth in Sections 207.3 and 207.4 of the B.C.Z.R., respectively.

Following proper public notice, this matter was originally scheduled for hearing on October 13, 2009. At the conclusion of this hearing, it was continued at the request of Petitioner's attorney until such time as the Department of Public Works ("DPW") had the opportunity to review and provide a recommendation on the waiver request as to the floodplain. The continued hearing was scheduled for November 13, 2009 and was also posted with proper public notice.

As previously indicated, the subject property was rezoned from D.R.5.5 to O-3 in the 2008 CZMP (Issue No. 6-029). Following the rezoning, a Development Plan was filed. The Development Review Committee ("DRC") met on September 29, 2008 and determined that the proposed development met the requirements of a limited exemption under Section 32-4-

106(b)(8) of the B.C.C. A copy of the DRC's October 20, 2008 letter indicating same was marked and accepted into evidence as Petitioner's Exhibit 5. The proposed Floor Area Ratio (FAR) of 0.35 is less than the maximum allowable FAR of 0.50. The cumulative total of amenity open space, provided in four separate areas, is approximately 3.11 acres, which exceeds the requirement of 1.94 acres. Similarly, the parking provided exceeds the parking required (despite the elimination of 17 spaces, at the request of the adjacent property owner, RTP, LLC, in order to add additional landscaping where the variance from Building B to the adjoining property line is being sought). All of these factors support a finding that the proposed development is not overly intensive and consistent with requirements of this office park Zone.

Petitioner's request for special hearing essentially encompasses three items of relief. First, Petitioner requests confirmation that the maximum height of the proposed Class B office buildings is in accordance with Sections 207.4 and 206.4.C.6 of the B.C.Z.R. (Section 207.4 subjects the proposed development to the performance standards of Section 206.4). Testimony and evidence was presented, through its 2008 rezoning, that suggests the County Council contemplated the site being used for an office park development where the building height would be limited by the maximum FAR of 0.50. As previously noted, the proposed office buildings are in compliance with the applicable FAR limitation and are located in the lowest developable portion of the property.

Second, Petitioner requests confirmation of the fact that the buildings and the site as set forth in the revised site plan and the Development Plan must be built in accordance with these plans by the Hearing Officer. Section 208.1 provides that no office building may be constructed or altered unless the building and its site conform to a plan approved by the Hearing Officer as provided in Article 32, Title 4 of the B.C.C. Section 32-4-101(v) of the B.C.C. defines Hearing

Officer as “the Zoning Commissioner or Deputy Zoning Commissioner.” Petitioner has asked that I grant relief under the Petition for Special Hearing to ensure the buildings to be constructed will conform to this plan and the Development Plan. Petitioner has appropriately requested zoning relief prior to the filing of its Development Plan for approval by the County. Petitioner has also requested that I ensure the buildings and the site will be developed in accordance with the plans.

Third, Petitioner is seeking permission to construct a parking facility, a portion of which lies in a riverine floodplain. Before this Hearing Officer/Deputy Zoning Commissioner can approve a waiver in a riverine floodplain under Section 32-8-301 of the B.C.C., certain findings must be made pursuant to Section 32-8-303 of the B.C.C., including a showing of good and sufficient cause, exceptional hardship, and a determination that the granting of a waiver will not increase flood heights, impact public safety, encourage extraordinary public expense, create nuisances, cause fraud or victimization of the public, conflict with existing local and state laws and ordinances, and will be the minimum necessary, considering the flood hazard, to afford relief. Furthermore, in considering a waiver action, comments from the State coordinating office and the County Department of Public Works shall be considered and maintained with the permit file.

Mr. Sichel offered further testimony regarding KCI’s delineation of the 100 year floodplain, showing existing conditions. The existing conditions delineation was approved by the County. KCI also submitted a waiver request, based upon the proposed improvements, to the County for consideration by David Thomas of DPW, and Dennis Kennedy with the Bureau of Development Plans Review. Mr. Sichel further explained that waivers are not granted unless they: (a) will result in no adverse off-site impact to adjoining properties and (b) will not result in

a flow depth increase of greater than half a foot. As previously indicated, the hearing was continued from October 13, 2009 because the Director of DPW had not yet made a recommendation concerning the waiver request. At the continued hearing on November 13, 2009, Petitioner presented a memorandum from Edward C. Adams, Jr., Director of DPW, to Timothy Kotroco, Director of Permits and Development Management (PDM), recommending approval of the waiver for the proposed grading in the 100 year floodplain for a driveway and parking area to serve the subject development. This DPW memorandum recommending approval of the waiver was marked and accepted into evidence as Petitioner's Exhibit 6.

Petitioner is also requesting variance relief for the setbacks from the buildings to the lot lines. Section 207.4 of the B.C.Z.R. subjects the proposed development to the performance standards of Section 206.4 of the B.C.Z.R. In particular, Section 206.4.C.1 reads as follows:

Minimum setback from any lot line other than a street line: 20 feet or equal to the height of the building, whichever is greater, except that, *from a residential or R-O Zone, the setback shall be two times the height of the building.* (emphasis added).

All of the property surrounding the subject site is zoned D.R.5.5. As such, the setbacks from the buildings to the lot lines is two times the height of the buildings. Both buildings are 54 feet. Therefore, the minimum setback is 108 feet for both buildings to the lot lines. As proposed, Building A lies 91 feet from the western lot line. Building B lies 106 feet from the eastern property line, but also lies 85 feet from the northeastern lot line as further indicated on the revised site plan. Since the original Petition requested variance relief for building B only as to the 106 foot setback, Mr. Schmidt requested at the October 13, 2009 hearing to amend the variance request to reflect the shorter setback distance of 85 feet. Since the case would be continued and rescheduled in order to resolve the waiver issue, Mr. Schmidt also offered to

repost the property with the 85 foot setback request. In light of the above, the undersigned granted the requested amendment without objection.

Testimony also indicated that the environmental constraints delineated by the 100-year floodplain and corresponding forest buffer in the southern portion of the property significantly limit the developable area on the site. Furthermore, the plan indicates that the topography falls as much as 30 feet from the northern to the southern end of the site, with the most drastic elevation disparity occurring in the southern portion of the site. These factors drive the need for the variance requests.

Finally, Mr. Schmidt referenced a letter dated July 29, 2009 from Joyce M. Willis, Managing Partner of RTP Partnership, now known as RTP, LLC (“RTP”), the owner of the property immediately adjacent to the subject property (5245 King Avenue), expressing support for the proposal, provided a row of parking spaces closest to their common lot line are removed and replaced with additional landscape buffering. The letter was marked and accepted into evidence as Petitioner’s Exhibit 3. Mr. Schmidt indicated this request has been agreed to by Petitioner and is depicted on the revised site plan, which shows a much larger landscape buffer area with the removal of the parking row, as compared with the original site plan. The landscape plan that was marked and accepted into evidence as Petitioner’s Exhibit 2 also shows significant tree plantings, shrubs, and ornamental grasses in this area.

The Zoning Advisory Committee comments were received and are contained within the case file. The comment dated September 8, 2009 and received from the Office of Planning indicates the office has reviewed the special hearing and variance requests and finds them acceptable, provided certain conditions are met, which will be expounded upon further in this Order.

After due consideration of the testimony and evidence presented, I am persuaded to grant the relief requested. As to the variance, I find that Petitioner has met the requisite burden imposed by Section 307.1 of the B.C.Z.R. for relief to be granted and that strict compliance with the regulations would cause undue hardship upon Petitioner. Office buildings are a permitted use and the failure to grant the variance would not provide the owners a reasonable use of their property. *See, Belvoire Farms v. North*, 355 Md. 259 (1999). I find that the property is unique in size, shape and topography. Moreover, in my view, the variance relief requested will not result in a detriment to the health, safety and general welfare of the surrounding locale. In fact, it is noteworthy according to Mr. Schmidt's proffer that Petitioner requested OR-2 zoning in the 2008 CZMP, but the County Council granted the change to O-3, showing a desire to support high intensity office use at the subject site, while also expressly precluding residential development by virtue of that zoning classification. It is also worth noting that the adjoining property owner most impacted by the setback variance request for Building B, the aforementioned RTP, LLC, has provided a letter of support for the proposed development.

I also find, as Deputy Zoning Commissioner/Hearing Officer in this matter, that the maximum height of the building is in accordance with Sections 207.4 and 206.4.C.6 of the B.C.Z.R. This finding is conditioned upon the Director of Planning making a compatibility recommendation under Section 32-4-402 of the B.C.C. The property was rezoned last year to the O-3 Zone -- a Zone which legislative policy dictates was established to provide for office park development. This height limitation is in addition to the FAR requirement, which further restricts the height of structures. The buildings are well below the FAR requirement and are located in the southern end of the property, which is approximately 20 feet lower than the northern end. Insofar as the second item for relief, I find that any buildings constructed must

conform with the proposed buildings and site locations shown on the revised site plan and Development Plan.

Finally, I find that the floodplain waiver should be granted. As the Director of DPW found, a showing of good and sufficient cause, in addition to an exceptional hardship, has been made and no detrimental impacts will be created.

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

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 10<sup>th</sup> day of December, 2009 that Petitioner's Special Hearing request in accordance with Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") as follows:

- To confirm that the building height of the proposed Class B Office Building is in accordance with Sections 207.4 and 206.4.C.6 of the B.C.Z.R.; and
- To confirm that the Hearing Officer finds the Development Plan is approved and the buildings and the site proposed herein conform to that Development Plan in accordance with Section 208.1 of the B.C.Z.R.; and
- For a waiver to permit construction of a parking facility in a riverine floodplain pursuant to Section 500.6 of the B.C.Z.R. and Sections 3112.00 and 3112.2 of the Baltimore County Building Code, and Sections 32-4-107, 32-4-404, 32-4-414, and 32-8-301 of the Baltimore County Code (B.C.C.) which (a) will result in no adverse off-site impact to adjoining properties and (b) will not result in flow depth increase of greater than half of a foot,

be and are hereby **GRANTED**; and

IT IS FURTHER ORDERED that Petitioner's Variance request from Section 206.4.C.1, as referenced by Section 207.4 of the B.C.Z.R., to permit Class B Office Building setbacks of 91 feet for proposed Building A and 85 feet for proposed Building B, in lieu of the required

setbacks of 108 feet and 108 feet, respectively, (two times the height of the buildings – 54 feet),  
be and are hereby **GRANTED**.

The relief granted herein is subject to the following conditions:

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 the 30-day appeal period from the date of 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. Prior to final approval of the Limited Exemption request, the Order of the Baltimore County Zoning case shall be placed on the development plan.
3. This project is subject to the compatibility requirements as stated in Section 32-4-402 of the Baltimore County Code.
4. Provide architectural building plans and elevations for all four sides of both of the proposed buildings including building materials and color schemes to the Office of Planning for review and approval. Show all entrances into the buildings.
5. Submit a lighting plan that is in accordance with IESNA standards in conjunction with the final landscape plan to Avery Harden, Baltimore Landscape Architect, for review and approval. Copies of both are also requested by the Office of Planning for review and approval.
6. The proposed landscape plan shall comply with the requirements of the Baltimore County Landscape Manual.
7. Provide details of any proposed signage and any entrance treatments. Specifically, provide the proposed dimensions and display them in the form of an elevation drawing and provide to the Office of Planning for review and approval.
8. Show the location and provide a detail drawing of any dumpster enclosures on the property and include on the plan. The dumpster surrounds should be constructed out of masonry not wood.
9. Pedestrian connections must be provided from the public right-of-way of both King Avenue and Franklin Square Drive into the site and the proposed buildings. Show the pedestrian connection on the development plan.
10. Provide pedestrian sidewalks along the length of the property along Franklin Square Drive as per the County's requirements.

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