

IN RE: <b>PETITION FOR VARIANCE</b>	*	BEFORE THE
E/S Ingleside Avenue, 188' S of c/line of	*	ZONING COMMISSIONER
Johnnycake Road	*	OF
<b>(1022 Ingleside Avenue)</b>	*	BALTIMORE COUNTY
1 <sup>st</sup> Election District	*	
1 <sup>st</sup> Council District	*	
Imtiaz Ahmed, et ux	*	
Petitioners	*	<b>Case No. 2010-0140-A</b>

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### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by Imtiaz Ahmed, and his wife Irfana A. Ahmed, property owners. As originally filed, the Petitioners requested variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: **(1)** From Section 405.4.A.2.a to permit an existing building and proposed addition setbacks of 25 feet and 19 feet, respectively in lieu of the required 35 feet setback from any street right-of-way, and to permit existing fuel pumps with a street right-of-way setback of 15 feet in lieu of the required 25 feet and to permit an existing canopy, with a street right-of-way setback of zero (0) foot in lieu of the required 15 feet; **(2)** From Section 405.4.A.2.b for a zero (0) foot landscape transition area in lieu of the required minimum width of ten (10) feet along the property line that abuts a public right-of-way and the required minimum width of six (6) feet along the property that abuts non-residentially zoned land; **(3)** From Section 405.4.A.2.c for no landscape transition area in lieu of the required vegetated and screened area; **(4)** From Section 405.4.A.3.c(2) to permit zero (0) stacking spaces per eight (8) multiproduct dispensers in lieu of the required eight (8) stacking spaces, and **(5)** From Section 409.8.A.4 to permit a zero (0) foot parking space setback in lieu of the required ten (10) feet setback to a right-of-way to public street. The property and requested relief are more particularly described on the amended

redlined site plan submitted which was accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the requests were property owners, Imtiaz and Irfana Ahmed; Aboul Baseer Khan and Russell Charles Rohrer, auto mechanics operating the Petitioners service bays, and Bernadette L. Moskunas with Site Rite Surveying, Inc., the consultant who prepared the site plan for this property and assisting the Petitioners through the process. Appearing as a nearby neighbor, customer and contractor d/b/a Dream Works Construction were John James and Darryl Hudson under contract to make the proposed improvements to the automotive service station and convenience store. Also in attendance and participating at the hearing was Area Planner Dennis Wertz with the Office of Planning. There were no Protestants or other interested persons in attendance, however, it is noted that the Office of People's Counsel entered its appearance and provided the undersigned with an in-depth review of the site conducted by Stephen E. Weber, Chief of Traffic Engineering. His guidance on issues involving access, circulation and overflow parking were both beneficial and constructive.

By way of brief history, this 23,636 square foot (0.54 acre) property is zoned B.L.-A.S. (Business, Local – Automotive Service) district overlay<sup>1</sup> and located north of Baltimore National Pike (US Route 40) in the Catonsville area. A review of Petitioners' Exhibit 3 illustrates the subject property is presently improved with the O-Mar's Fuel Service Station, a three-bay service garage in combination with a small convenience store (580 square feet) as ancillary uses. This property is bound by Ingleside Avenue to the west, Old Ingleside Avenue to the east and south and two (2) adjacent commercial properties to the north that front on Johnnycake Road. These

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<sup>1</sup> This zoning classification permits and promotes automotive business uses.

roads come together at the southeast point of the site forming a diamond shape. Four (4) access points exist, two (2) along Ingleside Avenue and two (2) additional access points exist along Old Ingleside Avenue allowing patrons to enter the site from the west side. Since the 1950s, when the site was originally developed as a fuel service station, it has existed at this location without change. The Petitioners have owned the site since 2005 and propose to continue the existing use and desire to expand the convenience store to better service the community. As illustrated on the site plan, a proposed 903 square feet addition will be added to the northwest side of the existing building and convenience store. The overall convenience store area will be less than 1,500 square feet. Section 405.6 of the B.C.Z.R. allows for the expansion of such stations as follows:

“Any fuel service station which legally existed by right or by special exception on the effective date of Bill No. 172-1993 may be expanded or reconstructed, and any ancillary use listed in Section 405.4.D may be added, provided that the project is confined to the limits of the site as it existed on the effective date of the Bill.”

Accordingly, the Petitioners, relying on the above directive, presented their plan to the Office of Planning and the Department of Permits and Development Management’s Office of Zoning Review on July 30, 2009. The Office of Planning issued comments on August 5, 2009 pointing out that the site is located within the Baltimore National Pike Commercial Revitalization District and wanted as a condition of approval the appearance of the property to be upgraded. Subsequently, on September 22, 2009 following the submission’s review for compliance with B.C.Z.R. Section 405.5, the Zoning Review Office withheld approval and directed the Petitioners to proceed to a public hearing before the Zoning Commissioner to obtain authorization for their desired improvements.

Ms. Moskunas testified describing the surrounding uses and presented the plan that was amended in response to comments submitted by the Office of Planning and the Bureau of Traffic

Engineering. She demonstrated and explained that due to the lot's configuration and the existing layout of improvements, it is difficult to comply with the current standards as directed in Section 405.4 of the B.C.Z.R. However, she stated with the proposed minor commercial addition, the owner's are more than willing to make changes to the site that will include, among others:

- Removal of the wooden refreshment shack,
- Close the southeastern-most entrance to alleviate traffic issues - three (3) remaining entrances,
- Provide striping for existing parking spaces - 10 (ten) spaces,
- Remove the air and vacuum tank,
- Provide a landscape area at the southern and northern-most section of the property to be approved by the County's Landscape Architect, Avery Harden,
- Vehicles to be repaired will be parked within the service bays at the end of the business day,
- Provide a public restroom within the convenience store to be used by patrons only,
- Maintaining the height of the addition so as to not exceed the height of the existing building, and
- Remove excessive signs.

In sum, Ms. Moskunas, an expert in land use and zoning in Baltimore County, indicated that with these changes the use will be consistent with B.C.Z.R. Section 405 and with the Section 502.1 requirements.

Mr. and Mrs. Ahmed stated that following their purchase of the service station they regrettably leased the improvements as they then lived in New York and were not aware of the day-to-day operations or the number of vehicles parked on the site contributing to substandard circulation patterns. They have now moved to the locale and have assumed direct management of their investment. In response to the comments received from the Office of Planning, they have

contacted Peirce Macgill in the Department of Economic Development to apply for any assistance that may be available from that agency to upgrade the property as suggested. Dennis Wertz provided photographs of existing conditions (*See* Baltimore County Exhibit 1) and undertook a review of his Zoning Advisory Committee (ZAC) comments, dated December 1, 2009, encouraging improvements at this site. The Ahmed's indicated their displeasure with some of the comments presented by Messrs. Wertz and Weber and believe they are being unfairly singled out. They submitted photographs depicting the existing conditions at the nearby Shell and Sunoco Stations, both within a block of their station. These photographs evidence the same circumstances, i.e., dumpsters not screened, parking next to the right-of-way, the lack of landscaped screening, etc. In an effort to rebut these concerns, they presented Petitions signed by more than 600 customers and residents from the surrounding locale who support them. *See* Petitioners' Exhibit 4.

Mr. James stated that Ingleside Avenue and Johnnycake Road are highly developed and form a commercial corridor, which serve the residential communities located to the eastern and western interior sides. As presently configured, the existing structure features three (3) service bays and a convenience store. He testified that the Petitioners enjoy a good relationship with neighboring property owners and many residents can drop their vehicles off for repairs and walk to their homes. He explained that the proposed construction will not be visible from the residential side of the street across Johnnycake Road nor will it change the existing uses at the site. However, by virtue of this 903 square feet addition (total 1,483 square feet), the parking requirements<sup>2</sup> increase and 17 spaces will be provided. Otherwise, there will be no changes to the fuel service operation. Gasoline is presently sold from 7:00 AM to 10:00 PM. Since the Petitioners' removal

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<sup>2</sup> The convenience store requires parking at a rate of five (5) spaces per 1,000 square feet.

of the prior tenant, by eviction and Court Order, there have been no damaged or disabled vehicles stored outside the building.

As stated at the conclusion of the hearing, this is a difficult case. From a practical standpoint, I am appreciative of the Petitioners' desire to improve their property for the highest and best use possible. On the other hand, the Office of Planning points out that the site is highly visible and surrounded by public roads on three (3) sides and needs improvements to the entire site. The undersigned advised the Petitioners and their consultant that the record of the case would be held open for a period of ten (10) months to allow for further discussions and dialogue with the County's Department of Economic Development, the Bureau of Traffic Engineering and Office of Planning to resolve some of the concerns that had been put forward during the public hearing. Subsequently, the Bureau of Traffic Engineering informed me that their concerns were met and provided their approval on February 26, 2010. A site visit and revised plan (Petitioners' Exhibit 1) addressed the following conditions: closure of the southern-most entrance along Old Ingleside Avenue; the addition of one (1) parking space; the removal of Pump Island #2 and the shift of three (3) proposed spaces in front of the convenience store to meet the required 22-feet drive aisle width. Said conditions are listed and shown on the revised plan, dated October 19, 2010. The landscape comments provided by the Office of Planning were addressed by Avery Harden, Baltimore County Landscape Architect, based on his site visit in March, 2010. Mr. Harden prepared a schematic Landscape Plan providing planting at the northern and southern-most areas of the property and proposed dumpster screening, as shown on Petitioners' Exhibit 1. Furthermore, after numerous meetings, plan revisions and an approved architectural rendering with building material list (over the course of ten [10] months), the Office of Planning has conditionally

approved the requested relief being sought. Again, their conditions are listed and shown on Petitioners' Exhibit 1, and I will incorporate them as part of my Order in this case.

I find that the Petitioners have presented the required testimony as to the standards of uniqueness, practical difficulty and compliance with the spirit and intent of the B.C.Z.R. as required under B.C.Z.R. Section 307 and case law. For the reasons set forth above, the variance relief shall be approved. There will be no adverse impact to the community as a result of the relief being granted.

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 8<sup>th</sup> day of November 2010, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: **(1)** From Section 405.4.A.2.a to permit an existing building and proposed addition setbacks of 25 feet and 19 feet, respectively in lieu of the required 35 feet setback from any street right-of-way, and to permit existing fuel pumps with a street right-of-way setback of 15 feet in lieu of the required 25 feet and to permit an existing canopy, with a street right-of-way setback of zero (0) foot in lieu of the required 15 feet; **(2)** From Section 405.4.A.2.b for a zero (0) foot landscape transition area in lieu of the required minimum width of ten (10) feet along the property line that abuts a public right-of-way and the required minimum width of six (6) feet along the property that abuts non-residentially zoned land; **(3)** From Section 405.4.A.2.c for no landscape transition area in lieu of the required vegetated and screened area; **(4)** From Section 405.4.A.3.c(2) to permit four (4) stacking spaces per six (6) multiproduct dispensers in lieu of the required six (6) stacking spaces, and **(5)** From Section 409.8.A.4 to permit a zero (0) foot parking space setback in lieu of the required ten (10)

feet setback to a right-of-way to public street, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED subject to the following:

- 1) The Petitioners may apply for their permit and be granted same upon receipt of this Order; however, Petitioners are 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 an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) The northernmost entrance along Ingleside Avenue is to be relocated to the south and reduced in width to 25 feet.
- 3) Directional arrows are to be placed at each driveway entrance to provide a circulation pattern.
- 4) Remove the multiproduct dispenser pump located at the southernmost driveway entrance along Ingleside Avenue to minimize traffic congestion and circulation issues.
- 5) Provide three (3) parking spaces along the front of the convenience store.
- 6) Remove the air and vacuum tank and reduce paving as indicated to provide additional landscaping and reduce the possibility of illegal parking.
- 7) Resurface asphalt in poor condition and repair any and all broken or cracked driveway aprons, sidewalks and/or curbing binding along the property lines for Ingleside Avenue and Old Ingleside Avenue.
- 8) Add curb and sidewalks at the proposed closures along the southernmost side of Old Ingleside Avenue and the relocation along the northernmost side of Ingleside Avenue to blend into existing conditions.
- 9) Screen the dumpster location shown on the eastern side of the existing building with a board-on-board fence.
- 10) Remove excessive signs (portable or otherwise) from the property and face of building.
- 11) All parking spaces are to be striped.

- 12) Planting and lighting to be provided per the final approved Landscape and Lighting Plan by Avery Harden, Baltimore County Landscape Architect.

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

WJW:dlw

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