

IN RE: <b>PETITION FOR VARIANCE</b>	*	BEFORE THE
NW/S of Belair Road (U.S. Route 1),		
52' E c/line of Forge Road	*	ZONING COMMISSIONER
<b>(9716 Belair Road)</b>		
	*	FOR
11th Election District		
5th Council District	*	BALTIMORE COUNTY
Perry Hall Investment Group, <i>Legal Owner</i>	*	<b>Case No. 2010-0199-A</b>
Time Out for Sports, Inc., <i>Contract Purchaser</i>		
Petitioners	*	

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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 the owner of the subject property, Perry Hall Investment Group, and the contract purchaser, Time Out for Sports, Inc., Petitioners, through their attorney, J. Neil Lanzi, Esquire.<sup>1</sup> The Petitioners request variance relief from Section 307 of the Baltimore County Zoning Regulations (B.C.Z.R.) for the approval of: (1) a parking variance to allow 19 parking spaces in lieu of the required 50 spaces per Section 409.6A(2), and (2) to allow two (2) parking spaces to be five (5) feet from the public right-of-way in lieu of the required ten (10) feet per Section 409.8A(4). The subject property and requested relief are more particularly described on the site plan, which was accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the requests were John "J.B." Sommer, President of Time Out for Sports, Inc., his mother, Nancy L. Sommer who started the business in 1983, and J. Finley Ransone of A2 Geomatics, a land surveying and engineering design company, who prepared the site plan for the improvements at this property and assisting Mr. Sommer with the permitting process. The Petitioners were represented by J. Neil Lanzi,

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<sup>1</sup> A settlement date on February 25, 2010 will transfer ownership to Time Out Sports, Inc. Despite best efforts to resolve zoning and environmental issues prior to settlement, Mr. Sommer was unable to do so given the severe weather conditions.

Esquire. There were no Protestants or other interested persons present.

Petitioner's counsel offered J. Finley Ransone, a registered professional surveyor and land use consultant, as an expert and had him introduce the site plan. Testimony and evidence revealed that the subject property, known as 9716 Belair Road, is an irregular shaped parcel located on the opposite side of U.S. Route 1 from Forge Road in Perry Hall. The lot has an area of 54,016 square feet (1.24 acres), more or less, and zoned B.L. A one-story, 4,946 square foot building formerly known as the Anthony Sylvan Pools retail store and macadam parking lot occupy the southern portion of the property. The property has 150 feet of frontage on Belair Road and is located within a heavy commercial corridor. The triangular shape at the rear of the property is created by a BGE right-of-way that traverses along the property line. This results in a 431 foot western side yard depth and only a 200 foot length on the eastern side. A Shell Oil Company Service Station is located directly across from the subject property on the east side of Forge Road. Immediately south of the property is 9712 Belair Road occupied by a four-story professional office building with paving from the front through the rear of the property. Immediately to the north of the subject property is 9722 Belair Road which consists of a one-story building containing retail shops and offices. Mr. Ransone presented photographs (*See Exhibit 4A through J*) and testified as to the uniqueness of the property and stated that the subject property was irregular in shape with the rear section containing scrub forest, possible wetlands and, as noted, the BGE right-of-way. The adjacent parcels no longer contain the scrub forest behind their sites.

There were no adverse Zoning Advisory Committee (ZAC) comments received, however, a copy of a letter from the Department of Environment Protection and Resource Management (DEPRM) addressed to the Petitioner indicated that further investigation of the property with

regard to wetlands and forest delineation was necessary. Mr. Ransone addressed the DEPRM concerns and indicated that the site plan offered as Exhibit 1 shows the proposed 4,900 square foot addition located to the rear of the existing building and over an existing macadam paved area. Mr. Ransone stated that as a result of the discussions with DEPRM, an alternative location for the addition may become necessary.<sup>2</sup>

Petitioner is requesting modified variance relief in light of the DEPRM comments should it become necessary to locate the addition in the alternative location on the property. The addition would be reduced in size to 4,750 square feet (rather than 4,900 square feet) reducing by four (4) the number of required parking spaces. That is to say under Exhibit 2, 23 spaces would be available in lieu of the required 49 spaces under the new plan. The setback variance for the two (2) parking spaces five (5) feet from the public right-of-way in the front was not affected by the red-lined changes. In this regard, Mr. Ransone noted the setback variance from the public right-of-way of Belair Road is needed as the State Highway Administration (SHA) has widened the roadway and property line on several occasions taking a total of 15 feet of frontage as a result.

Mr. Ransone testified that it was his opinion that *the original rear location of the proposed addition* as shown on Exhibits 1 and 2 would be better suited for the expansion of the building due to the existing partially paved conditions on the property and especially since *the alternative location consisted of a grassy area providing a pervious surface* which would then be made impervious as a result of the addition. Mr. Ransone stated that in his opinion practical difficulty would result for the Petitioner if strict compliance with the regulations were required due to the existing conditions on the property, i.e., the road widening, BG&E right-of-way and

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<sup>2</sup> In light of the DEPRM comment, Petitioner offered Exhibits 2 and 3 evidencing a red-lined plan with an alternative addition location and revised parking calculations.

environmental factors discussed. Mr. Ransone further testified that in his opinion the parking and setback variances would not alter the essential character of the neighborhood and there would be no detriment to the health, safety or general welfare of the neighborhood.

J.B. Sommer, who manages the day-to-day functioning of Time Out for Sports, Inc., testified that he has operated his sporting goods retail and uniform fabrication business off of Joppa Road for several years and was purchasing the subject property in order to find a new home for his expanding business. Mr. Sommer stated he had discussed his plans with the Perry Hall Improvement Association and received no objection. Mr. Sommer stated he had also reviewed both the initial plan offered as Exhibit 1 and the red-lined plan offered as Exhibit 2 with his immediate neighbors, Charles B. Marek, Jr. owner of 9712 Belair Road (professional office building) and Franco Marcantoni, owner of 9722 Belair Road (one-story building to the north) and neither property owner had any objection. *See* letters of support from both neighbors that were accepted as Petitioners' Exhibits 5 and 6. Mr. Sommer indicated he fully understood the limitations on the number of manufacturing employees and equipment as provided for in B.C.Z.R. Section 230.12 for his uniform fabrication. The appropriate limitations are contained as notes on the site plan. Due to the nature of the business, Mr. Sommer indicated he has never had an issue with parking for his employees and customers at his current Orchard Tree Lane location that provides 20 spaces. He does not anticipate any issues with parking at the new location. Nancy Sommer testified that she began the business in 1983 selling equipment and uniforms for women's volleyball teams. The business has since expanded to all types of sporting events and the equipment necessary to outfit them. The primary customer base is affiliated Baltimore and Harford County Recreation Councils who order uniforms for various sanctioned team sporting activities.

The Sommers', Petitioner's consultant and the undersigned all prefer the original addition location at the rear of the existing structure as shown on Exhibit 1 as opposed to the alternate location shown on Exhibit 2 that pushes the building envelope within 2 feet of the common property line with 9722 Belair Road.

After due consideration of the testimony and evidence presented, I am persuaded to grant the requested relief. In my judgment, Petitioner has complied with the requirements of Section 307 of the B.C.Z.R. as interpreted by the Court in *Cromwell v. Ward*, 102 Md. App. 691 (1995) by establishing that the subject contains unique characteristics that result in the regulations impacting disproportionately upon the property. I find that strict compliance with the parking and setback requirements would result in practical difficulty and unreasonable hardship. I further find that the granting of the zoning relief will be in strict harmony with the spirit and intent of the B.C.Z.R. and will not cause substantial injury to the public, health, safety and general welfare.

Pursuant to the advertisement, posting of the property, the public hearing held on this Petition, and the amended Petition received as Exhibit 3, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED, by the Zoning Commissioner of Baltimore County, this 1<sup>st</sup> day of March, 2010, that the Petition for Variance seeking relief from Sections 307 and 409.6A(2) of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit 19 parking spaces in lieu of the required 50 spaces, or in the alternative, 23 parking spaces in lieu of the required 49, in accordance with Petitioners' Exhibits 1 and 2, be and are hereby GRANTED, and

IT IS FURTHER ORDERED, that the Petition for Variance seeking relief from Sections 307 and 409.8A(4) of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit two (2)

parking spaces to be five (5) feet from the public right-of-way in lieu of the required ten (10) feet, in accordance with Petitioners' Exhibits 1 and 2, be and are hereby GRANTED, subject, to the following conditions:

1. The Petitioner may apply for its building permit and may 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 such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason, this Order is reversed, the Petitioner will be required to return and be responsible for returning said property to its original condition.
2. The Petitioner shall comply with the recommendation made by the Department of Environmental Protection and Resource Management (DEPRM) in its Zoning Advisory Committee (ZAC) comment, dated February 18, 2010, and attached letter to the Petitioner, dated January 26, 2010, copies of which are attached hereto and made a part hereof.
3. When applying for a building permit, the site plan filed and ultimately selected by the Petitioner must reference these case(s) and set forth and address the restrictions of this Order.

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

\_\_SIGNED\_\_\_\_\_  
WILLIAM J. WISEMAN, III  
Zoning Commissioner  
for Baltimore County