

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
SE side of Philadelphia Road; 521 feet SW		
of the c/l of Mohrs Lane	*	DEPUTY ZONING
15 th Election District		
6 th Councilmanic District	*	COMMISSIONER
(9913 Philadelphia Road)		
	*	FOR BALTIMORE COUNTY
White Marsh Commerce Park, LLC		
<i>Petitioner</i>	*	CASE NO. 2010-0204-A

* * * * *

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, White Marsh Commerce Park, LLC. Petitioner is requesting Variance relief as follows:

- From Section 238.2 (by way of Section 255.1) of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow rear yards of 20 feet for building nos. 1-7 and 9-11 in lieu of the 60 feet required for rear yards;
- From Section 238.2 (by way of Section 255.1) of the B.C.Z.R. to allow a rear yard of 30 feet for building nos. 8 and 9 in lieu of the required 60 feet required for rear yards; and
- From Section 450.4.3(v) of the B.C.Z.R. to permit 36 square feet of face area, or, in the alternative, 24 square feet of face area, for the proposed directional sign in lieu of the maximum permitted 3 square feet of face area per sign; and
- From Section 450.4.3(vii) of the B.C.Z.R. to permit a directional sign with a height of 6 feet in lieu of the maximum permitted height of 4 feet in a residential zone; and
- From Section 450.4.3(ix) of the B.C.Z.R. to permit a directional sign with a company name or logo which is more than 50% of the total sign area in lieu of the maximum permitted 30% of the total sign area.

The subject property and requested relief are more fully depicted on the 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 requests was Lawrence E. Schmidt, Esquire on behalf of Petitioner White Marsh Commerce Park, LLC. Also appearing in support of the requested relief was Rick Chadsey, the professional engineer who

supervised the preparation of the site plan for Petitioner. The case also garnered interest in the community and several adjacent and nearby property owners appeared in opposition to the requested relief. The Protestants included John Dudnanski, Judith Davies, Sharon Waddill, Richard DeSimone, John Buedel, and Michael Touchard. There were no other interested citizens in attendance at the public hearing.

Testimony and evidence offered revealed that the subject property is irregular in shape and contains 9.69 acres, more or less, split-zoned M.L.-I.M. with a thin strip of D.R.3.5 in the western corner of the property. The property is located on the east side of Philadelphia Road (MD Route 7), opposite Spotswood Road and south of Mohrs Lane, in the Nottingham / White Marsh area of Baltimore County. Also to the east of the property is a CSX railroad line and Pulaski Highway (U.S. 40). Petitioner submitted several aerial photographs of the subject property, which were marked and accepted into evidence as Petitioner's Exhibits 2A through 2C. The photographs reveal the precise location of the property and its irregular shape, which consists of a wider, rectangular center area located between thin strips of land that extend to the western and eastern corners of the property. In unusual fashion, the property is accessed from Philadelphia Road via a thin strip of land that opens up into a rectangular central area before again thinning out into a strip of land on the eastern side of the property.

The site plan and photographs also reveal a number of unusual characteristics including environmental restrictions and an existing cemetery that is centrally located and notched into the southern section of the property. A significant portion of the eastern section of the property is dedicated to a proposed storm water management facility, which is classified as a 100-year detention facility. The facility far surpasses the minimum requirement for storm water management on this property, which is only required to protect against a 5-year storm. The

property is further constrained by sizeable forest buffer and forest conservation easements in the northeast corner of the property. Petitioner has maintained the wooded area along the northeast side of the property and is limiting the proposed storage business to the central area of the property.

Further evidence revealed that the property owner wishes to open a self-storage business on the property that will consist of a two-story office building near the western corner of the property and a series of 12 parallel storage buildings for residential and commercial use. The first floor of the two-story office building will consist of office space and the second floor will provide living quarters for a 24-hour on call caretaker to monitor the storage units. In order to shed additional light on the proposed layout of the twelve storage buildings, Petitioner submitted a series of aerial photographs depicting similar storage businesses on properties throughout Baltimore County. The photographs were marked and accepted into evidence as Petitioner's Exhibits 3A through 3F. While the photographs do not reveal the exact layout reflected on the site plan accompanying the variance petition, they provide an approximate representation of the layout of the storage buildings that will be constructed on the subject property. The first portion of the relief requested in this petition relates to the setbacks between each of the proposed storage buildings. Buildings 1-7 and 9-11 will have a 20-foot rear setback in lieu of the required 60 feet, and buildings 8-9 will have a rear setback of 30 feet in lieu of the required 60 feet.

Additional testimony described the directional sign that Petitioner is proposing to construct off of Philadelphia Road in the D.R.3.5 area, on the west side of the property. The storage business will be accessed from Philadelphia Road and the directional sign will alert potential customers of the existence of the business. The proposed sign will stand six feet tall and will be reinforced with an underground steel pole as reflected on the site plan. The base of

the sign will contain the number of the street address for the subject property, and the rectangular section of the sign will contain the words Nottingham Self Storage as well as the phone number for the business. Petitioner submitted several photographs depicting similar signs throughout the Whitmarsh area, which were marked and accepted into evidence as Petitioner's Exhibits 4A through 4K. Similar to the aerial photographs submitted to represent the proposed layout of the storage buildings, these photographs do not show the exact dimensions of the proposed sign but provide illustrative examples of similarly sized and structured signs throughout the surrounding area. Petitioner also submitted a series of photographs depicting larger, raised signs along Philadelphia Road between Middle River Road and U.S. 40. These photographs, which were marked and accepted into evidence as Petitioner's Exhibits 5A through 5M, reveal that larger, taller commercial signs frequent the area surrounding the subject property. Petitioner is not proposing to construct an overhead sign as depicted in the aforementioned exhibits, but rather is limiting the proposal to the type of sign shown in Exhibits 4A through 4K. Due to the proposed size of the face area and words depicted on the sign, Petitioner is in need of variance relief.

Following the conclusion of the Petitioner's case, several Protestants who appeared at the public hearing testified and expressed their concerns with regard to the project and the variance requests. John Dudnaski explained that in his belief, the zoning regulations provide for sufficient property uses and should be strictly enforced. Judith Davies testified that her family owns adjacent properties and is opposed to the requested relief. Ms. Davies explained that she did not feel that the property was unique, expressed concerns over fire hazards and emergency risks, and was opposed to the construction of a storage business near a residential neighborhood. Michael Touchard, who owns property northeast of the subject property, expressed concern that the proposed sign would impact the sight lines from his property. Richard DeSimone testified that

he is not a neighbor but was appearing on behalf of the Nottingham Community Association. According to Mr. DeSimone, the Association maintains the grass and cemetery located at the southern section of the property and he hoped there would be a provision that the Association would still have access to the cemetery for the continued maintenance of the small cemetery. Finally, the Protestants submitted a letter from Lorenzo DiCocco, President of the Nottingham Improvement Association. The letter, which was marked and accepted into evidence as Protestants' Exhibit 1, explains the general objection of the surrounding community to issuing variances for both the minimum required setbacks and the dimensions of the sign.

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 March 16, 2010, which state that the Department cannot support the required variances. They request that Petitioner revise the site plan to include a future right-of-way of approximately 70 feet wide running in a north/south direction, bisecting the site in the approximate location of the climate controlled building. Preliminary planning efforts in the area indicate a need for a road connection through this property (Mohrs Lane to Middle River Road) in conformance with the Pulaski Highway-BRAC Draft Redevelopment Plan (*see*, map attached to comments). This plan was recently prepared and will be included in the Master Plan 2020; the Planning Office is in the process of amending the County's Master Plan 2010 that was adopted on February 22, 2000 and is slated for its decennial review and amendment. The plan will be amended in sections beginning with the Rural Areas portion. The Office of Planning, in partnership with all other County agencies, is working on a proposal for redevelopment of existing commercial properties in need of rehabilitation, with an emphasis on mixed use (commercial and residential), walkable, and transit-oriented sustainable development. The Office of Planning believes it would be

premature to approve the plan and variances for the proposed development on the subject property while the Master Plan 2020 planning efforts are ongoing and without the plan being revised to reflect the above-referenced road connection. Therefore, the Planning Office recommends denial of the requested relief.

The Office of Planning provided a detailed Comment that deserves further analysis and explanation before the specific variance requests are addressed. Most importantly, while the Comment raises questions concerning the authority of Baltimore County to impose restrictions and demand reservations through the development process, this matter did not come before the Zoning Commissioner as a Hearing Officer's Hearing on a development plan. The limited issue at stake in this zoning petition is whether the request meets the requirements of Section 307.1 of the B.C.Z.R., as interpreted in *Cromwell v. Ward*, 102 Md.App. 691 (1995).

The Office of Planning Comment does correctly note that Baltimore County has the authority to demand public reservations through the development process, but seems to overlook the fact that this authority is only available in limited circumstances. Specifically, a reservation may only be imposed when a feature of a development plan would "conflict with, interfere with, impede or delay a proposal in the Master Plan." *See*, Baltimore County Code ("B.C.C."), Section 32-2-301. As the Office of Planning's Comment explains, the requested dedication for the proposed road related to this case is not currently reflected in the County's Master Plan and the County simply intends to incorporate the proposed road in the 2020 Master Plan. Accordingly, this development does not conflict with the existing Master Plan and the County does not appear to have any authority to impose such a reservation in this case.

The Planning Comment also raises questions as to the authority of the County to demand conveyance of a right-of-way and/or easement corresponding to a proposed road shown on the

draft BRAC plan. While the County does have the authority to make such a demand in the development plan context, the Court of Appeals of Maryland has held that “in order to exact from a developer a setting aside of land for highway purposes there must be a reasonable nexus between the exaction and the proposed subdivision.” *See, Howard County v. JJM, Inc.*, 301 Md. 256, 282 (1984). In the present scenario, even if this case was set in for a Hearing Officer’s Hearing on a development plan, the proposed self-storage business is a small commercial development. This is significant because unlike a residential subdivision, which could place many demands on public infrastructure, the dedication of the roadway described in the Planning Comment was not necessitated by (i.e., the requisite nexus) the small commercial project in question, thus the requested dedication does not meet the requisite “reasonable nexus” standard. That is, there is no evidence that the exaction requested by Planning is sufficiently related to Petitioner’s project. In sum, the Planning Comment raises several questions concerning the authority of the County to impose reservations and demand conveyances through the development process, but this Commission is not conducting a hearing on a development plan. Indeed, the limited issue before the Zoning Commissioner is whether the requested relief meets the B.C.Z.R. criteria for a variance.

After considering all of the testimony and evidence presented at the public hearing, I am persuaded to grant the requested variance relief. The relief requested in this petition can essentially be divided into two sections: setback variances for the proposed storage buildings and sign variances. Due to the complex nature of the requests, the applicable regulations will be explained before the requests are subjected to the criteria for a variance.

Turning first to the setback variances, Section 255.1 of the B.C.Z.R. explains that the area regulations in the M.L. Zone shall be the same as those in the B.R. Zone. Since all of the

requested setback variances lie in the M.L.-I.M portion of the property, the area regulations governing these requests are contained in Sections 238.1 and 238.2 of the B.C.Z.R., which provide the area regulations for the B.R. Zone. Section 238.1 of the B.C.Z.R. explains that the only front setback for commercial buildings in the M.L Zone relates to the setback from the front property line (50 feet if on a dual highway, 25 feet from the property line and 50 feet from the center line of any other street). Because the proposed storage buildings lie further than 50 feet from the front property line and center line of Philadelphia Road, Petitioner is not required to seek any variances for front setbacks. However, Petitioner is required to seek rear setback variances for the space between each of the parallel storage buildings for the reason that Section 238.2 of the B.C.Z.R. requires commercial buildings to have minimum side and rear yards of 30 feet (emphasis added). As previously stated, the site plan reflects that Buildings 1-7 and 9-11 will have a 20-foot rear setback and Buildings 8-9 will have a rear setback of 30 feet.

Initially, it is somewhat curious that the Zoning Review office required Petitioner to request rear setback variances from “the minimum of 60 feet required for rear yards” rather than the 30 foot rear yard required under Section 238.2. Presumably, the office relied on Section 102.2 of the B.C.Z.R., which states that: “no yard space or minimum area required for a building or use shall be considered as any part of the yard space or minimum area for another building or use.” This section mandates that if two adjacent buildings each require a front and a rear yard of 30 feet, the total setback between the buildings must be 60 rather than 30 feet because the space dedicated to each yard cannot overlap without a variance; however, Section 102.2 does not appear to apply to the storage buildings proposed for the subject property because, as previously stated, there is no building-to-building front setback in the M.L. Zone and Petitioner is only seeking variances for rear setbacks between each of the storage buildings (emphasis added).

That being said, the classification of the setback requests from minimum requirements of 60 feet rather than 30 feet does not effect the ultimate decision of this Commission to grant the requested variances. As will be explained in greater detail below, I find that this request meets the criteria for a variance regardless of whether the minimum rear yard is viewed as 30 feet or 60 feet.

Turning next to the variances related to the proposed sign, the applicable regulations are contained in the table of sign regulations codified as Section 450.4 of the B.C.Z.R. As shown on the site plan and explained at the public hearing, the proposed directional sign is located in the D.R.3.5 portion of the property and is therefore regulated by Section 450.4.3 of the B.C.Z.R. Pursuant to Section 450.4.3(vii), the maximum height for directional signs in a residential zone is 4 feet and Petitioner is proposing to construct a sign with a height of 6 feet. Additionally, Section 450.4.3(ix) provides that a company name or logo make not take up more than 30% of the total sign area, and Petitioner is proposing a logo that comprises 50% of the sign. Finally, the maximum area/face of a directional sign permitted under Section 450.4.3(v) is 3 square feet and the proposed sign has a face area of 36 square feet. For the following reasons, I find that the requested sign variances, as well as the requested setback variances, should be granted.

Initially, I find that 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 uniquely shaped and is further constrained by a number of environmental factors and the existence of a cemetery centrally located at the south side of the property. As previously stated, a significant portion of the eastern section of the property is dedicated to a storm water management facility as well as forest conservation and forest buffer easements. The environmental conditions, combined with the unique shape of the property, place unusual constraints on the building area available for the storage buildings.

I also find that Petitioner would suffer practical difficulty and undue hardship if the variances were to be denied in that Petitioner would be denied a use of the property that is specifically permitted by the Regulations. Section 253.1 permits a series of industrial and storage uses as of right in the M.L. Zone. The unusual shape of this property should not prohibit Petitioner from making use of the subject property as a storage business that is permitted as of right. Certainly, it is perhaps unusual that this use would be permitted near residentially used properties and the D.R. Zone, but it is equally important to recognize that such a use is specifically permitted in the M.L. Zone under the present zoning configuration in the area.

As for the proposed sign, the Whitemarsh area is filled with commercial businesses that maintain much larger and more imposing signs than that proposed by Petitioner. Testimony presented at the public hearing revealed that the sign is not elevated similar to the gas station or fast food restaurant signs that aim to bring in customers looking for those types of businesses from afar. The sign in this case is simply dedicated to directing customers to the location of the storage business, and it would cause an unnecessary burden to prohibit Petitioner from adequately informing customers along Philadelphia Road of the existence of the business.

I further find that the variances 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. After listening to the testimony of the Protestants at the public hearing, it appears that the most significant concern relates to the existence of a business in close proximity to the residential properties located north and east of the subject property. While it might seem strange that a property adjacent to residential homes is zoned M.L.-I.M., as previously stated, the zone permits a series of industrial and storage uses as of right. It is therefore important to note that the “use” of the property as a storage business is not in question

in this case, and the only matters for consideration are the appropriate space between the storage buildings and maximum size of the directional sign along Philadelphia Road.

I find that permitting Petitioner to limit the space between the storage buildings to 20 feet and 30 feet, respectively, will not cause any fire or other emergency issues and will have no additional effect on the surrounding community. The effects of a storage business would be the same whether the buildings are spaced 20, 30, or 60 feet apart, as this is not the type of business that will result in a heavy stream of traffic entering and exiting the property regardless of the space between the units. There should be sufficient space and drive aisle between the buildings for customers to utilize the storage units, and Petitioner's plan appears to meet that need. Additionally, I find that the proposed sign can be erected without causing any harm or injury to the surrounding public, because the property is located along Philadelphia Road in the largely commercial White Marsh area. The photographs submitted by Petitioner demonstrate that the surrounding area is filled with signs similar to that proposed by Petitioner, and the layout of this sign is far less intrusive than many of the larger, raised signs that are designed to reach potential customers from a distance.

Based on the preceding analysis, I find that the variances can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R., as interpreted in *Cromwell v. Ward*, 102 Md.App. 691 (1995). The granting of this variance will be subject to several conditions aimed to alleviate the concerns of the neighboring Protestants.

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

THEREFORE, IT IS ORDERED this 19th day of April, 2010 by this Deputy Zoning Commissioner, that Petitioner's Variance requests as follows:

- From Section 238.2 (by way of Section 255.1) of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow rear yards of 20 feet for building nos. 1-7 and 9-11 in lieu of the 60 feet required for rear yards;
- From Section 238.2 (by way of Section 255.1) of the B.C.Z.R. to allow a rear yard of 30 feet for building nos. 8 and 9 in lieu of the required 60 feet required for rear yards; and
- From Section 450.4.3(v) of the B.C.Z.R. to permit 36 square feet of face area, or, in the alternative, 24 square feet of face area, for the proposed directional sign in lieu of the maximum permitted 3 square feet of face area per sign; and
- From Section 450.4.3(vii) of the B.C.Z.R. to permit a directional sign with a height of 6 feet in lieu of the maximum permitted height of 4 feet in a residential zone; and
- From Section 450.4.3(ix) of the B.C.Z.R. to permit a directional sign with a company name or logo which is more than 50% of the total sign area lieu of the maximum permitted 30% of the total sign area,

be and are 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 construct a privacy fence (preferably board on board) of sufficient height to adequately screen along the northeast side of the property that separates the subject property from adjacent residential properties.
3. Petitioner must amend the site plan to reflect a planting and landscaping strip beginning at the northern corner of the forest conservation easement and running along the northeast side of the property.
4. There shall be no loud speakers or other noise amplification system on the property as part of the public self-storage use.
5. Lighting shall be mounted on the storage buildings and shall be illuminated to the internal areas of the site so as to meet the visibility and security needs of customers. There shall be no light standards of the height and magnitude normally associated with a shopping center.

Advisory – Petitioner should make every effort to allow continued access to the small cemetery located at the southern end of the property. Testimony during the hearing indicated the Nottingham Improvement Association maintains the cemetery and certainly this should continue if possible. The site plan shows access to the cemetery is via Taylor Lane, a private road that is labeled on the site plan as “existing right to use with others for ingress/egress.” Perhaps an agreement can be reached between Petitioner and the Association for access to Taylor Lane for the continued maintenance of the cemetery.

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