

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
NE side of Windsor Mill Road; NW		
corner of Rolling Road	*	DEPUTY ZONING
2 nd Election District		
4 th Councilmanic District	*	COMMISSIONER
(7500 Windsor Mill Road)		
	*	FOR BALTIMORE COUNTY
Yong and Soon Hee Park		
<i>Legal Owners</i>	*	
Baltimore County, MD		
<i>Contract Purchaser</i>	*	CASE NO. 2010-0254-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 Yong Park and Soon Hee Park, the legal owners of the subject property, and Timothy M. Kotroco, Director of the Department of Permits and Development Management, on behalf of Baltimore County, MD, the contract purchaser. Petitioners are requesting Variance relief as follows:

- From Section 232.3.B of the Baltimore County Zoning Regulations (“B.C.Z.R.”) for a rear yard setback of 10 feet in lieu of the required 20 feet; and
- From Section 232.3.B of the B.C.Z.R. for a side yard setback of 1 foot, 7.43 feet and 7.69 feet in lieu of the required 10 feet; and
- From Section 232.1 of the B.C.Z.R. for a front yard setback of 1 foot in lieu of the required 10 feet and a centerline to building setback of 30 feet and 37.43 feet in lieu of the required 40 feet; and
- From Section 409.6 of the B.C.Z.R. to permit 5 parking spaces in lieu of the required 9 spaces; and
- From Section 409.8.A.4 of the B.C.Z.R. for a parking space setback of 0 feet in lieu of the required 10 feet; and
- For such other and further relief as may required by the Zoning Commissioner.

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 was Jin Park, daughter of Petitioners Yong and Soon Hee Park. Also appearing on behalf of Baltimore County were Brad Knatz and Ron Goodwin with the Bureau of Land Acquisition and Abed Bssisso with the Department of Public Works. The site plan was prepared by Michael Youngworth, also with the Bureau of Land Acquisition. There were no Protestants or other interested persons in attendance.

The testimony and evidence in the case was presented by Mr. Knatz by way of a proffer and revealed that the subject property is irregular in shape and consists of approximately 8,000 square feet, more or less, zoned B.L. The property is located at the northwest corner/intersection of Rolling Road and Windsor Mill Road in the Hebbville/Windsor Mill area of Baltimore County. As shown on the site plan and the photographs that were collectively marked and accepted into evidence as Petitioners' Exhibit 2, the property is improved with an existing one-story building with entrances on each side of Rolling Road and Windsor Mill Road and parking for nine vehicles. Petitioners own and operate a dry cleaner and also provide tailoring and alteration services. Petitioners' daughter, Jin Park, indicated that the business has been at the location for approximately 20 years, and before that was once a Royal Farm Store.

At this juncture, Baltimore County has determined that improvements to Rolling Road, adjacent to Petitioners' property, are needed in order to improve traffic safety and circulation in that area. In order to do so, the County is in need of additional land on the Rolling Road side of Petitioners' property; however, as shown on the site plan, this acquisition results in a widening of the County's right-of-way and encroaches into the existing building. Mr. Knatz explained that

normally, a situation such as this could result in what is termed a “total taking” of the property, in which the County would acquire the entire property by condemnation, thereby requiring Petitioners to relocate their business from the subject site. The County officials from the Bureau of Land Acquisition have appreciated the magnitude this course could have on Petitioners and have attempted to work with them in devising a solution that would not displace Petitioners from the property, but would still allow for the necessary changes to be made to Rolling Road.

The County’s land acquisition officials and engineers have inspected the existing building and have determined that changes can be made to the building that include removing a non-load bearing area located at the northeast side of the building and adding an addition to the rear of the building. The changes are shown on the elevation drawing and demo and new work details that were collectively marked and accepted into evidence as Petitioners’ Exhibit 3. It is a potential win-win for the parties because Petitioners would gain an improved building with more storage spaces and without the need for the temporary storage locker that is presently located at the rear of the building, and the County could proceed with its important capital project, while also not displacing a successful business in the Windsor Mill community. In order to go forward with the planned improvements, Petitioners are in need of the above-listed variance relief.

In support of the variance relief, Messer’s Knatz, Bssisso, and Youngworth explained that the relief is necessitated by the Public Works project at Rolling Road. But rather than displacing Petitioners and completely taking the subject property, the County believes it is sufficient for their needs and more cost effective to acquire the right-of-way and pay Petitioners for the alterations to the building. Several factors that also impact the property are its irregular, triangular shape -- akin to a “pie” shape -- and its location at the unusual convergence of Rolling Road and Windsor Mill Road; namely, that these two roads are not situated as a “traditional”

intersection at relative “right angles,” but is shaped more like an “X,” with the subject property situated in the smaller, thinner area of the “X.” Because of this unique shape and location, the road widening project and the acquisition of the right-of-way has a more pronounced effect on the subject property.

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 April 14, 2010 which indicates that the Baltimore County Highway Design Division of Public Works has necessitated Petitioners’ request in the efforts to secure a portion of the subject site to expand the right-of-way for future highway widening of Rolling Road from Windsor Mill Road to Liberty Road. The Office of Planning supports the requested relief.

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. Obviously, the entire necessity of Petitioners’ variance requests is the County’s road widening project that is slated to encroach into Petitioners’ property. Unless a creative accommodation can be made, which would allow Petitioners to keep their property and their business, the County could be forced to make the acquisition a total taking. The alternative to such an intrusive scenario is for Petitioners to make certain changes to the building and for the County to literally and figuratively “work around” the building. I believe the shape and location of the property, and its status vis-à-vis the County’s capital improvement project, render it unique in a zoning sense and potentially impact the property disproportionately as compared to other properties in the zoning district.

I also find that Petitioners would suffer practical difficulty and undue hardship if the variance requests were to be denied. Put simply, Petitioners could not sustain their business at

the location and would be forced to move, which would have potential negative consequences on the business. Finally, I 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.

THEREFORE, IT IS ORDERED this 24th day of May, 2010 by this Deputy Zoning Commissioner, that Petitioners' Variance relief as follows:

- From Section 232.3.B of the Baltimore County Zoning Regulations ("B.C.Z.R.") for a rear yard setback of 10 feet in lieu of the required 20 feet; and
- From Section 232.3.B of the B.C.Z.R. for a side yard setback of 1 foot, 7.43 feet and 7.69 feet in lieu of the required 10 feet; and
- From Section 232.1 of the B.C.Z.R. for a front yard setback of 1 foot in lieu of the required 10 feet and a centerline to building setback of 30 feet and 37.43 feet in lieu of the required 40 feet; and
- From Section 409.6 of the B.C.Z.R. to permit 5 parking spaces in lieu of the required 9 spaces; and
- From Section 409.8.A.4 of the B.C.Z.R. for a parking space setback of 0 feet in lieu of the required 10 feet,

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.

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