

IN RE: PETITION FOR VARIANCE
E side of York Road; NW corner of
York Road and Ridgely Road
8th Election District
3rd Councilmanic District
(1801 York Road)

1801 YR, LLC
Petitioner

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY
* **CASE NO. 2010-0297-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 Lou Cohen, Managing Member, on behalf of the legal owner of the subject property, 1801 YR, LLC. Petitioner is requesting Variance relief from Sections 238.2 and 102.2 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow a building-to-building setback of 32 feet in lieu of the required 60 feet. The subject property and requested relief is 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 request was Marc Cohen on behalf of Petitioner 1801 YR, LLC and David H. Karceski, Esquire, attorney for Petitioner. Also appearing in support of Petitioner’s request for relief were Kevin Small, registered landscape architect, and Dave Rudisill, a civil engineer, both with Frederick Ward Associates, Inc., the firm that prepared the site plan and is managing Petitioner’s proposed development. Appearing as an interested citizen was Eric Rockel, President of the Greater Timonium Community Council. There were no Protestants or other interested persons in attendance.

Testimony and evidence offered revealed that the subject property is rectangular in shape and consists of approximately 2.72 acres, more less, zoned B.R. The property is located in the Lutherville area of Baltimore County, at the northeast corner of the intersection of York Road and

Ridgely Road, with ingress/egress from both public roads. The subject property sits along the heavily traveled commercial corridor of York Road, north of Towson and south of Cockeysville/Hunt Valley, and is bordered by a shopping center -- zoned D.R.3.5 -- that wraps around the subject property to the north and east. The rest of the area surrounding the subject property contains a mix of commercial and residential zoning districts. The Ridgely Road residential subdivision, zoned D.R.5.5, is located on the opposite side of Ridgely Road to the south of the subject property. The zoning makeup of the area surrounding the subject property can be seen in the zoning map that was marked and accepted into evidence as Petitioner's Exhibit 2. Several shopping centers also exist near the subject property. The size of the parcels in this area of York Road are extremely varied, as seen in the tax map of the area that was marked and accepted into evidence as Petitioner's Exhibit 3.

As background to the request at hand, Petitioner noted the recent development history of the subject property. It was revealed that the subject property was previously occupied by the Dulaney Lincoln-Mercury car dealership. The remnants of this prior use can be seen in the photographs that were marked and accepted into evidence as Petitioner's Exhibits 4A through 4E. Mr. Karceski proffered that the subject property was purchased in 2008 and that it was soon determined thereafter that its continued use as a car dealership was no longer viable considering the economic climate.¹ Mr. Cohen testified that redevelopment of the property was pursued and it was determined that a retail-office use for the subject property would be consistent with the commercial nature of this area of York Road. The subject property went through the development process, appearing before the Development Review Committee ("DRC") and receiving approval.

¹ The subject property was purchased from Branco, Inc. in the Deed recorded as Liber-Folio 27143-676.

This initial plan was for the construction of a Walgreens store and a pad site for a proposed bank. The approved plan did not necessitate variance relief. The existing one-story building shown on the site plan consisting of 16,500 square feet, more or less, is nearing completion and will be occupied by the aforementioned Walgreens store. However, due to the struggling economy and the continuing decline of the current banking market, a lessee for the potential banking pad site has not come to fruition. As such, at this juncture, Petitioner proposes to construct a one-story commercial building containing 7,800 square feet, more or less, to be used for retail or office space. Mr. Cohen and Mr. Karceski indicated that no restaurant or fast food establishment is intended for the location. Access to the property is two-fold: a full exit and right-turn entrance is available from Ridgely Road and a full entrance and right-turn exit is available from York Road.

The proposed development meets all external setback requirements and parking requirements. Mr. Karceski stated that variance relief is requested for a building-to-building setback of 32 feet in lieu of 60 feet pursuant to Section 238.2 of the B.C.Z.R. This section requires a 30 foot setback; however, Section 102.2 of the B.C.Z.R. states that “[n]o 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.” Although the distance between the buildings is internal to the property and the affected area is between the two proposed buildings shown on the site plan, the Zoning Review Office has interpreted this section to require a 60 foot setback, so that each building has its own 30 foot setback for a total of 60 feet; hence, the requested variance relief.

In support of the variance request, Mr. Karceski proffered the testimony of Petitioner’s design and engineering consultants that the property is constrained by unique circumstances that would render strict compliance with the Zoning Regulations impracticable. Mr. Karceski

explained that the property line to the north and east shared with Grand York Plaza has an extremely steep grade. Moreover, the entire property sits at an angle on York Road. The steep grading of the subject property and its configuration can be seen in the photographs that were marked and accepted into evidence as Petitioner's Exhibit's 4A through 4E and 5A through 5I. Additionally, Mr. Karceski cited the fact that the Grand York Plaza shopping center wraps around the subject property and the subject property's location at the intersection of York Road and Ridgely Road as special circumstances affecting the placement of improvements on the property. It is the totality of these circumstances that render this property unique in a zoning sense and drive the need for variance relief.

Further, since a retail commercial use is consistent with the spirit and intent of the zoning classification for this site, compelling Petitioner to strictly comply with the Zoning Regulations would cause unreasonable hardship and practical difficulty by denying Petitioner the right to use the subject property as permitted by these Regulations. Mr. Karceski added that this relief could be granted without detriment to the community and conversely, that Petitioner's improvements would increase the curb appeal and aesthetics of the property and would provide needed redevelopment of an important commercial site to this area of Lutherville. Additional testimony was proffered that if called to testify, Mr. Small would indicate the significant landscaping provided for in the plan in order to increase the aesthetics and positive impact on the surrounding community. Mr. Small's resume was marked and accepted into evidence as Petitioner's Exhibit 7 and an approved landscape plan was marked and accepted into evidence as Petitioner's Exhibit 6.

Appearing as an interested citizen, Eric Rockel, President of the Greater Timonium Community Council, questioned Petitioner's consultants and Mr. Cohen and expressed some concerns about the proposed development of the property. The majority of these concerns

centered on traffic flow within the property itself and between the Walgreens and the proposed commercial building. Mr. Rockel inquired as to the possibility that a second drive aisle lane could be placed between the two buildings. Mr. Rudisill, whose resume was marked and accepted into evidence as Petitioner's Exhibit 8, testified that the proposed internal traffic flow, with proper signage, could safely and adequately serve the subject property. Mr. Cohen also indicated that directional signage could be provided for and that the safety of patrons is a primary concern in this proposal. Mr. Rockel also expressed concerns about parking. Mr. Rudisill noted that the proposed parking plan was in compliance with the Regulations. However, Mr. Cohen stated that potential lessees would be encouraged to have their employees park in the rear of the site, to the east of the proposed commercial building, leaving closer and more desirable spaces for customers.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments received from the Office of Planning dated June 7, 2010 indicate no opposition to the variance request provided that Petitioner submits building elevations for review and approval to the Office of Planning prior to the application of building permit. Mr. Karceski indicated that Petitioner has no objection to this condition and commented that additional review and approval by the DRC is still necessary prior to this continued development.

The determination of a variance request from the Zoning Regulations is governed by Section 307.1 of the B.C.Z.R., as interpreted by the Court of Special Appeals of Maryland in *Cromwell v. Ward*, 102 Md. App. 691 (1995). As indicated by the Court in *Cromwell*, "The general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances." 102 Md.App. at 700. The two part variance test involves finding that a property is unique and unusual and that if strict adherence to the regulations were required absent relief, an unreasonable hardship or practical difficulty would

result. Self-inflicted or created hardship is not considered proper grounds for a variance. *Id.* at 707.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Specifically, I find that the steep grade of the property resulting from its location on the decline of a hill, the fact that the property is located at an intersection with significant road frontage, and the location of the adjacent shopping center parcel that wraps around the subject property, combine to render the property unique. Further, I find that strict compliance with the Zoning Regulations would create a hardship that would result in a denial of a reasonable and sufficient use of the property. *See, Belvoir Farms v. North* 355 Md. 259 (1999). Thus, refusing to grant the variance would result in unreasonable hardship and practical difficulty. I also find this variance request can be granted in strict harmony with the spirit and intent of Section 307.1 of the B.C.Z.R., as interpreted in *Cromwell*, and in such a 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 by Petitioner, I find that Petitioner's variance request should be granted.

THEREFORE, IT IS ORDERED this 13th day of July, 2010 by this Deputy Zoning Commissioner, that Petitioner's Variance relief from Sections 238.2 and 102.2 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to allow a building-to-building setback of 32 feet in lieu of the required 60 feet be and is 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 submit building elevations to the Office of Planning for review and approval prior to the application of building permit.
3. Petitioner shall place directional signage at the appropriate locations on the property so as to promote efficient traffic circulation within the property.
4. Petitioner shall direct lessees and/or tenants to encourage employees to park at the northeast portion of the subject property, behind the proposed commercial building, so as to provide customers with more desirable parking near the buildings to the west and south on the property.

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