

IN RE: **PETITIONS FOR SPECIAL EXCEPTION *
AND VARIANCE**
S/S Philadelphia Road (MD Rte. 7), 705' E of *
c/line of Golden Ring Road
(8629 Philadelphia Road) *

15th Election District *
6th Council District *

8629 Philadelphia Road, LLC *
Petitioner *

BEFORE THE
ZONING COMMISSIONER
FOR
BALTIMORE COUNTY
Case No. 2010-0322-XA

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Exception and Variance, filed on behalf of the owner of the subject property, 8629 Philadelphia Road, LLC by Michael Novak, its managing member, through their attorney, John B. Gontrum, Esquire. The Petitioner requests a special exception to allow a Class B Office Building in the Residential – Office (R-O) zone, pursuant to Section 204.3.B.2 of the Baltimore County Zoning Regulations (B.C.Z.R.). In addition, variance relief is sought from B.C.Z.R. Section 204.4.C.4 or alternatively Section 204.4.C.5 for a setback of four (4) feet in lieu of the required ten (10) feet side yard setback (northeast side) or alternatively in lieu of a 30 foot rear yard setback. The subject property and requested relief are more particularly described on the site plan submitted, which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the requests were Michael Novak, on behalf of the owner, and Patrick (Rick) Richardson, P.E. of Richardson Engineering, LLC, the consultant who prepared the site plan for the property. John B. Gontrum, Esquire of Whiteford, Taylor & Preston, LLC appeared on behalf of the Petitioner. There were no Protestants or other interested persons present.

Testimony and evidence offered disclosed that the subject property consists of approximately 0.731 acres located on the southeast side of Philadelphia Road just west of its intersection with I-695. To the property's east and south are an industrially zoned, business flex property and the ramp to eastbound Baltimore beltway. To the west of the subject property along Philadelphia Road is another R-O zoned property occupied by a dwelling and to its rear is a D.R.5.5 zoned property also occupied by a dwelling. The property is currently occupied by a 1,876 square foot two-story dwelling built in 1929 and used as an office by Consolidated Coatings, Inc. also controlled by Mr. Novak, its President. The office clearly fronts on Philadelphia Road and to its rear is a small garage and a parking area. The property has a 4 foot drop in elevation moving west to east.

The proposal includes the construction of a one-story 1,500 square foot garage within 4 feet of the northeastern property line, the removal of the existing garage and some proposed paving to allow vehicles using the garage an adequate turn around area. The proposed garage would face west into the rear yards of the residential properties located west of the site. The garage is intended to house equipment and vehicles associated with the business.

Petitioner seeks the variance because centering the garage on the property would be difficult due to the topography of the rear portion of the site. A substantial amount of grading is reduced by having the rear of the garage abut the M.L. zoned property. In addition, there is much less paving required to have the vehicles maneuver outside of the parking area. Furthermore, by placing the garage in its proposed location the Petitioner has positioned it to be far removed from the residential uses and in the rear of the houses to minimize its impact on the residential uses to the west.

Testimony further indicated that the garage would essentially be a metal building in keeping with the office building and the adjacent business flex development. In response to a comment filed by the Office of Planning, Petitioner was agreeable with planting a hedge of Leland Cypress along the southwestern boundary of the property opposite the side loaded doors of the garage to screen the garage from the residentially used property.

It is clear from the site plan and the testimony that the front of the property is Philadelphia Road. Even though the rear of the garage will extend along the northeastern property line, this property line is still the side yard of the property which fronts on Philadelphia Road. Even though a garage of this size may be considered to trigger the special exception requirements of the R-O zone, it is still the office building and the site itself which dictate the side and rear yards. Based on the information and evidence, it is clear that the variance requested should be from the 10 foot side yard setback requirement of B.C.Z.R. Section 204.4.C.4, as opposed to the 30 foot rear yard requirement contained in Section 204.4.C.5.

A special exception also is requested based on the new garage proposed on the site. The purpose of the R-O zone stated in B.C.Z.R. Section 203.2A is to serve as a transition or buffer between residential and more intense office, retail or industrial uses by permitting office development which is highly compatible with residential uses. Section 204.2 further states: "It is intended that buildings and uses in R-O Zones shall not intrude upon or disturb present or prospective uses of nearby residential property." Consequently, even though Section 101 contains definitions for both Class A and Class B office buildings, and a Class B office building requires a special exception in the R-O Zone, it seems clear that the intent of the section is to consider under certain circumstances even accessory use buildings as a trigger for the requirement of a special

exception hearing. In this case even though the office building itself is not being enlarged, the proposed addition of a 1,500 square foot building serving the office building properly raises the requirement of a special exception before the use is permitted.

In this case, however, it is clear that the requirements of Section 502.1 have been met. I find that the garage is appropriate in this instance and consistent with existing uses in the area. The addition of the garage will not increase traffic to the office building. Furthermore, Philadelphia Road (Maryland Route 7) is a very busy road, and the increment of traffic from the property to the total traffic volume is minimal. Finally, one would be hard pressed to find a property with better access to a major road network than this one.

The property is served by public water and sewer and both are adequate at the site. The site plan depicts a fire hydrant within a few feet of the eastern property line, and the new garage will not create a potential hazard from fire, panic or other danger.

Given the size of the property which contains approximately 2/3 of an acre in net area (31,862 square feet), the total building area is still less than ten percent (10%) of the property. The garage will not overcrowd the land, and there are no deficiencies in public services that exist now or would be created by the requested relief.

The garage is only one story in height and is located closer to the industrially zoned and used area than to the residences. It is not inconsistent with the property's zoning classification or the spirit and intent of the zoning regulations. The proposal contains the required amenity open space, and the Petitioner has agreed to provide landscaping along the southwestern property line to screen the garage doors from the adjoining properties to the west.

Accordingly, I find that the proposed development of the site should be granted a special exception. The proposed use of the site will not be injurious to the public health, safety or general welfare.

I also find that a variance from the 10 foot required side yard setback should be granted based on the unique features of the site's topography and the site's relationship to the adjoining uses.

It is far more desirable to have the garage located closer to the industrial zoned property and to provide a buffer area to the residentially zoned properties than to center the garage on the site with all of the consequential grading. Compliance with the zoning regulations would create a practical difficulty not only for the Petitioner but also for the adjoining residences.

As noted above, Zoning Advisory Committee (ZAC) comments were filed by several agencies with respect to the request, and none of the comments were adverse to the requested relief. The Office of Planning not only requested landscaping along the property to buffer the proposed garage from the existing residences to the west but also requested review of the elevations of the garage. I find this latter request to be unnecessary. The garage is essentially a one-story accessory structure to the building, directly adjacent to an industrial area. The garage appears to be little larger than those on the adjoining residential properties. With the screening in place there is no need for the additional review.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions 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 26th day of July, 2010 that the Petition for Special Exception to permit a Class B Office Building and garage on the subject property, pursuant to Section 204.3.B.2 of the Baltimore County Zoning

Regulations (B.C.Z.R.), be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance from B.C.Z.R. Section 204.4.C.4 for a setback of four (4) feet in lieu of the required ten (10) foot side yard setback, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; subject to the following restrictions:

1. The Petitioner may apply for any required building permits and be granted same upon the receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until the thirty (30) day appeal period from the date of 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. Following issuance of the building permit for the garage, but prior to the issuance of a use and occupancy permit, Petitioner shall plant and maintain a row of Leland Cypress or similar evergreen materials along the southeastern boundary of its property from the southwest corner of the existing paving for a distance of 80 feet along its southeastern property line to screen the garage from the adjoining properties on the south side of the subject site.

IT IS FURTHER ORDERED that Petitioner's alternative variance request to have a rear setback of four (4) feet in lieu of the minimum required rear yard setback of 30 feet, is hereby DISMISSED AS MOOT.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code and filed within thirty (30) days of the date of this Order.

WJW:dlw

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