

IN RE: PETITIONS FOR SPECIAL	*	BEFORE THE
EXCEPTION AND VARIANCE		
SE side of Philadelphia Road, 32 feet	*	DEPUTY ZONING
NE from the c/l of King Ave		
15 th Election District	*	COMMISSIONER
6 th Councilmanic District		
(9501 Philadelphia Road)	*	FOR BALTIMORE COUNTY
Nicholas Andrew Foehrkolb	*	
<i>Legal Owner</i>		
	*	Case No. 2011-0058-XA

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Exception and Variance filed by Nicholas Andrew Foehrkolb, the legal property owner. The Special Exception is requested pursuant to Section 248.2.B of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow a carry-out, fast food and standard restaurant within a M.L.R. Zone which is part of a contiguous area of 25 acres or more of industrial zoning and in which the specific use proposed is demonstrably an appropriate service to industries existing, planned or normally to be expected to locate therein. The Variance request is also from Section 248.2.B of the B.C.Z.R. to permit the combined tract areas for a carry-out, fast food and standard restaurant (services commercial) use to occupy 55% in lieu of maximum 15 % of the M.L.R. tract in which they are located. The subject property and requested relief are more fully described 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 Special Exception and Variance requests was Petitioner Nicholas Andrew Foehrkolb and Bruce E. Doak with Gerhold,

Cross & Etzel Ltd., the professional land surveyor who prepared the site plan. There were no other interested persons in attendance at the hearing.

The instant matter is a companion case with Case No. 2010-0255-A, in which Petitioner requested certain setback and parking variance relief for the subject property following Petitioner's construction of a 7 foot wide by 22 foot long "bump out" addition to the rear of the existing building. The variance relief was needed to legitimize conditions that have existed over time related to front and side yard setbacks and parking, as well as a rear yard setback for the addition. Pursuant to the Order dated June 15, 2010, the undersigned granted the aforementioned relief; however, subsequently, the Office of People's Counsel for Baltimore County filed an appeal. As explained by Mr. Doak, People's Counsel took issue with the failure to include the requirements of Section 248.2.B of the B.C.Z.R. -- specifically, the need for a special exception to operate the carry-out, fast food and standard restaurant within an M.L.R. Zone, and a variance to permit the restaurant and parking areas to occupy 55% in lieu of the maximum 15% of M.L.R. tract. Although Mr. Doak believes People's Counsel's contention is arguable at best, in the interest of resolving any outstanding issues for his client, Mr. Doak filed the instant Petitions for zoning relief.

The testimony and evidence presented in Case No. 2010-0255-A is identical to the testimony and evidence in the instant matter. It is incorporated herein by reference as if recited in its entirety. As a supplement to the testimony and evidence presented in the prior case, and in support of the requested special exception, Mr. Doak indicated that the subject property is included in over 100 acres of contiguous M.L.R. zoned property -- perhaps closer to 200 acres -- with a mix of services businesses such as sit-down restaurants, carry-out restaurants, and banks, as well as an array of diverse business uses, including manufacturing, offices and retail. The

subject property has a long-standing history at the subject location having been there since 1997, which could constitute longevity in today's economic climate. Mr. Doak was accepted as an expert in zoning and land use and interpretation of the Zoning Regulations, and offered his opinion that the requested special exception would not be detrimental to the health, safety, or general welfare of the locality, nor would it have any detrimental impacts or adverse effects on the other applicable criteria set forth in Section 502.1 of the B.C.Z.R. As to the variance request, Mr. Doak indicated that the area is essentially a commercial corridor with a multitude of service and retail businesses. Moreover, this area of Philadelphia Road is set up to handle these types of businesses and the existing restaurant and parking areas occupying 55% of the property is similar to other service businesses nearby.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments were received from the Office of Planning dated August 12, 2010 which indicates that the requests are for modifications to an existing structure for an existing use. Comments were received from the Bureau of Development Plans Review dated August 26, 2010 which indicates that a condition of the approval of the special exception and variance should be that Petitioner re-stripe the parking lot to show minimum 18 foot deep parking spaces and a defined drive aisle.

Turning first to the requested special exception, I am persuaded to grant the relief. The uncontroverted testimony of Mr. Doak demonstrates that the existing restaurant on the subject property will have no detrimental impacts on the relevant 502.1 criteria. Moreover, the hindsight of 13 years in business confirms no adverse impact. In regard to the variance request, based on the testimony and evidence, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests, that strict compliance with the

Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship, and that the variance request 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, including the specific findings set forth in the Order issued in Case No. 2010-0255-A.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and after considering the testimony and evidence offered, I find that Petitioner's Special Exception and the Variance requests should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 20th day of October, 2010 that Petitioner's request for Special Exception pursuant to Section 248.2.B of the Baltimore County Zoning Regulations ("B.C.Z.R.") to allow a carry-out, fast food and standard restaurant within a M.L.R. Zone which is part of a contiguous area of 25 acres or more of industrial zoning in which the specific use proposed is demonstrably an appropriate service to industries existing, planned or normally to be expected to locate therein be and is hereby **GRANTED**; and

IT IS FURTHER ORDERED that Petitioner's Variance request from Section 248.2.B of the B.C.Z.R. to permit the combined tract areas for a carry-out, fast food and standard restaurant (services commercial) use to occupy 55% in lieu of maximum 15 % of M.L.R. tract in which they are located be and is hereby **GRANTED**.

The granting of the above relief shall be subject, however, to the following conditions:

1. Petitioner may apply for any permits required and be granted same upon receipt this Order; however, Petitioner is hereby made aware that proceeding at this time is at his 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 re-stripe the parking lot to show minimum 18 foot deep parking spaces and a defined drive aisle.

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