

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
NE side of Reisterstown Road; 396 feet		
NW of Seven Mile Lane	*	DEPUTY ZONING
3 rd Election District		
2 nd Councilmanic District	*	COMMISSIONER
(201 Reisterstown Road)		
	*	FOR BALTIMORE COUNTY
Safeway, Inc.		
<i>Legal Owner</i>	*	
Seven Mile Food Market, LLC		
<i>Contract Purchaser</i>	*	CASE NO. 2011-0078-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, Safeway, Inc., and the proposed lessee, Seven Mile Food Market, LLC. Petitioner is requesting Variance relief as follows:

- From Section 238.2 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a side building setback of 17 feet in a B.R. Zone in lieu of the required 30 feet; and
- From Section 409.6.A.2 of the B.C.Z.R. to permit 282 parking spaces in lieu of the required 300 parking spaces.¹

The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the variance request were Howard M. Boehm, manager, on behalf of Petitioner Seven Mile Food Market, LLC and Benjamin Bronstein, Esquire, attorney for Petitioner. Also appearing in support of the relief was Judith

¹ The Petition as filed requested variance relief for a required 299 spaces. It was pointed out that this was due to a calculation error in rounding the number down instead of rounding up as required. Hence the actual number should have been 300 spaces and was amended accordingly.

Floam with Colbert Matz Rosenfelt, Inc., the engineering and surveying firm that prepared the site plan. There were no Protestants or other interested persons in attendance.

Testimony and evidence offered revealed that the subject property is rectangular shaped and contains approximately 5.05 acres, more or less. As delineated on the site plan, the property is comprised of several zoning classifications, including predominantly B.R.-A.S. in the front, B.R. in the middle, and B.M. to the rear. There are also very small slivers of D.R.5.5 and D.R.16 zoning near the northern corner of the property. The subject site is located on the northeast side of Reisterstown Road, just west of Seven Mile Lane near the Baltimore City/County line, in the Pikesville area of Baltimore County. The property is improved with an existing one-story brick and block building consisting of approximately 55,256 square feet located toward the rear of the site, as well as an established entrance from Reisterstown Road and drive aisles and a large parking lot located in the forward two-thirds of the site.

Further evidence and details of the case were presented by way of a proffer from Mr. Bronstein and supplemented by Petitioner's expert, Ms. Floam. Ms. Floam's resume was marked and accepted into evidence as Petitioner's Exhibit 2 and indicates that she is a professional planner with a Master's Degree in Urban Planning. She has been in the field of site planning and municipal planning since 1967, and has site planning experience in commercial, residential, and institutional development. She was offered and accepted as an expert in planning and zoning and interpretation of the Zoning Regulations.

Mr. Bronstein indicated that Petitioner owns the property directly south and adjacent to the subject property that is currently home to the Seven Mile Market located at 4000 Seven Mile Lane. The building on that property consists of approximately 28,600 square feet. The Market is a Kosher Market that caters primarily to the residents in the surrounding community, as well as other patrons from around the Baltimore Metro area. The current location is no longer

suitable for the Market's needs and Petitioner has arranged to move into the building on the subject property. This building was originally constructed for a new Safeway grocery store that opened in 2003, but closed earlier this year. Although the former Safeway building consists of about 55,000 square feet, Petitioner desires to construct an addition to the building of about 4,600 square feet for a total of almost 60,000 square feet. The addition would house additional receiving and storage areas for the Market. This is necessitated by the particular requirements for the storage and handling of food items in the Kosher Market, including special inspection requirements and refrigeration requirements, as well as the separation of dairy and meat products. Mr. Boehm, the Seven Mile Market manager, indicated that without the addition to the former Safeway building, it is not adaptable for their use because the current storage and receiving areas do not adequately address their unique needs.

In support of the requested variance relief, Ms. Floam indicated that the placement of the proposed addition is the most practical and useful location for the added receiving and storage space. The existing storage and loading areas for the building are already on the side of the proposed addition depicted on the site plan, hence, there would be far less alteration to the existing building. Ms. Floam also noted that the addition to the building would not increase the size of the retail area or increase capacity for customers, nor would it cut into the existing available parking areas.

As to the uniqueness of the property, Ms. Floam explained that the split zoning, which not only cuts in several areas across the property, but also cuts across the existing building, is the main factor that necessitates the variance relief. Most of the existing building is in the B.M. Zone, as would most of the addition, and this would require a 0 foot setback requirement; however, the presence of part of the building -- and part of the planned addition -- in a small area zoned B.R. requires the 30 foot setback for the entire addition. This is further illustrated in the

setback/zoning exhibit that was marked and accepted into evidence as Petitioner's Exhibit 5. The other problem is that if the addition were built entirely in the B.M. Zone so that variance relief was not required, it would not provide the needed receiving and storage space for the Market. Another unique feature is the use itself. This Kosher Market presents challenges regarding the handling and storage of food that most other grocery stores do not encounter, and requires Petitioner to utilize additional space that customers and the public never really see or are consciously aware.

As to the parking variance, Ms. Floam indicated that the building with its current square footage requires 277 parking spaces and there are presently 282 spaces. With the increased square footage of the addition, the number of required spaces also increases to 300 spaces. Although there will be no additional retail area and the number of customers and, therefore, the number of vehicles parked, will be relatively unchanged, the Zoning Regulations nonetheless require that parking be increased by 5 parking spaces per 1,000 square feet of additional space to the building. The Regulations look at the addition on the whole as additional retail space, resulting in the need for the additional parking; however, it appears that the shortage of 18 parking spaces under the 300 spaces required by the Regulations amounts to a deficiency of 6%, which appears under the circumstances to be a minimal insufficiency.

Ms. Floam also pointed out that there is a privacy fence abutting the D.R. zoned sides of the property that will be maintained. Moreover, as shown in the aerial photograph of the surrounding area that was marked and accepted into evidence as Petitioner's Exhibit 3, this area is part of the Pikesville commercial corridor in need of revitalization -- several businesses have closed over the years including the aforementioned Safeway -- and this new location for the only kosher supermarket in the Baltimore area will be a significant economic contributor to the community.

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 September 16, 2010 which indicates the property is a former Safeway store that has been vacated. The proposal is to convert it to a kosher grocery store, the Seven Mile Market. The site is within the Pikesville Revitalization District in an area described as Urban Convenience in the Pikesville Revitalization Plan Update. The 4,598 square foot addition required to meet the new grocery store's needs for storage and delivery is subject to the Pikesville Design Guidelines and review by the Baltimore County Design Review Panel (DRP). Compliance with these guidelines is binding on both the Zoning Commissioner and the Director of Permits and Development Management. Due to the nature, location and minor size of the proposed addition (less than 8% of the existing building) the Planning Director has determined that the project is eligible for administrative DRP review. If the setback and parking variances are granted, the Petitioner should complete the DRP process to final zoning approval. Comments were received from the Department of Environmental Protection and Resource Management dated October 12, 2010 which states there is a State (MDE) groundwater contamination case for this site. Petitioner should contact MDE for details.

After considering all of the testimony and evidence presented at the hearing, 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 request. The split zoning of the property, with over five different zoning classifications on this relatively small and otherwise unremarkable 5 acre property presents zoning and setback challenges that particularly affect the subject site disproportionately as compared with other properties in the zoning district; hence, I find the property to be unique in a zoning sense. I also find that the use itself is unique as a Kosher Market due to the specific protocols that are necessary for receiving, handling, and

storing kosher foods. This presents challenges that also cause the Regulations to disproportionately affect Petitioner because of the amount of space needed to properly address those kosher needs. As to the parking variance, I am easily convinced based on the evidence presented that the parking that was provided to the site for the past seven years will continue to adequately serve the site with the construction of the addition. There likely will be a paucity of new customers generated from the addition, and the existing parking appears to have served the site well over the years.

I also find that Petitioner would be subject to practical difficulty and undue hardship if the setback and parking variances were not granted. Petitioner essentially would be unable to use this readily available property for a Kosher Market, which is already outfitted exteriorly and interiorly as a supermarket from its prior use as a Safeway store. This surely would be a waste of existing resources, as well as an opportunity for an area in need of business revitalization. Finally, I find these variance requests can be granted in strict harmony with the spirit and intent of the Zoning Regulations, and in such a manner as to grant relief without injury to the public health, safety and general welfare. Color renderings of the proposed Seven Mile Market with the attached addition were marked and accepted into evidence as Petitioner's Exhibit 4, and illustrate that the addition will be constructed of similar brick and other materials as the existing store building. It appears the addition will blend well and not result in any visual clutter with the surroundings. In my judgment, there will no adverse impacts associated with the addition or the proposed parking layout.

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 Petitioner's variance requests should be granted.

THEREFORE, IT IS ORDERED this 1st day of November, 2010 by this Deputy Zoning Commissioner that Petitioner's Variance requests as follows:

- From Section 238.2 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a side building setback of 17 feet in a B.R. Zone in lieu of the required 30 feet; and
- From Section 409.6.A.2 of the B.C.Z.R. to permit 282 parking spaces in lieu of the required 300 parking spaces,

be and are hereby **GRANTED**, subject to the following:

1. Petitioner may apply for permits 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. The site is within the Pikesville Revitalization District in an area described as Urban Convenience in the Pikesville Revitalization Plan Update. The 4,598 square foot addition required to meet the new grocery store's needs for storage and delivery is subject to the Pikesville Design Guidelines and review by the Baltimore County Design Review Panel (DRP). Compliance with these guidelines is binding on both the Zoning Commissioner and the Director of Permits and Development Management, and compliance with DRP recommendations shall be incorporated in this Order as if set forth herein.
3. Due to the nature, location and minor size of the proposed addition (less than 8% of the existing building) the Planning Director has determined that the project is eligible for administrative DRP review. If the setback and parking variances are granted, the Petitioner should complete the DRP process to final zoning approval.

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