

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N side of Eastern Avenue; 225 feet W		
of the c/l of Taylor Avenue	*	DEPUTY ZONING
15 th Election District		
7 th Councilmanic District	*	COMMISSIONER
(426-430 Eastern Avenue)		
	*	FOR BALTIMORE COUNTY
U.S. Construction, LLC		
<i>Legal Owner</i>	*	
Farhat Cheema		
<i>Contract Purchaser</i>	*	CASE NO. 2011-0133-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 owners of the subject property, U.S. Construction, LLC and Farhat Cheema (hereinafter “Petitioner”). Petitioner is requesting Variance relief as follows:

- From Section 232.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve a front yard setback of 6 feet in lieu of the required 10 feet; and
- From Section 232.3 of the B.C.Z.R. to approve a rear yard setback of 2 feet in lieu of the required 20 feet; and
- From Section 409.6 of the B.C.Z.R. to approve 9 on site parking spaces in lieu of the required 41; and
- From Section 409.9 of the B.C.Z.R. to permit handicapped parking in the public right-of-way lieu of on site.

The subject property and requested relief are more fully described on the redlined 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 Petitioner Farhat Cheema and Deborah C. Dopkin, Esquire, attorney for Petitioner. Also appearing in

support of the relief was Amit Barman, Petitioner's architect, and Vincent Moskunas with Site Rite Surveying, Inc., the land 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 13,185 square feet or 0.302 acre, more or less, zoned B.L.-C.C.C. The property is located on the north side of Eastern Avenue, just west of Taylor Avenue and east of the intersection of Eastern Avenue and Mace Avenue, in the Essex area of Baltimore County. The subject site is improved with a business-commercial style building that was built in 1939 and takes up almost the entire square footage of the property. Photographs of the front façade of the structure and the rear alley behind the building were marked and accepted into evidence as Petitioner's Exhibits 2A and 2B, respectively. They show a rather antiquated building front with unremarkable red brick and very little architectural interest.

Recently, Petitioner has undergone a renovation of the subject site and has improved the appearance of the building dramatically. As shown on the computer aided rendering of the front building façade, there is now an abundance of glass windows and doors throughout the storefronts, tall columns that divide the proposed uses therein, and attractive stone at the base of the columns. Photographs that were marked and accepted into evidence as Petitioner's Exhibits 4A through 4D also show the details of the front façade. As a result of these improvements, Petitioner is in need of variance relief to legitimize the existing location and condition of the building, and to reconfigure the parking, which was almost non-existent before the renovations.

As explained by Mr. Moskunas, the first two variance requests pertain to the existing building. Relief is required for the front and rear yard setbacks because when it was built in 1939, the building was built almost to the property lines/right-of-ways in the front and rear. It was also

constructed prior to the adoption of the original Zoning Regulations in 1945. As to the parking variances, prior to the renovations, there was no on site parking for the property; however, as shown on the redlined site plan, Petitioner proposes to use one of the building interiors for on site parking and also proposes to place an additional handicapped space in the right-of-way. Details of the plan for the handicapped spaces is shown on the enlargement of the redlined site plan that was marked and accepted into evidence as Petitioner's Exhibit 6. As also depicted on that Exhibit in highlighted "yellow," an entrance will be cut for ingress/egress to/from the building.

As to the proposed uses, Petitioner plans to have a convenience store, a coin-operated Laundromat, and an MVA convenience office. The property would be known as the "Cheema Center," with the convenience store and Laundromat open generally between 9:00 AM and 9:00 PM. As a final matter, Ms. Dopkin indicated that the redevelopment that has been ongoing at the site will be consistent with the Essex revitalization strategy that includes inviting and updated storefronts, as well as hardscape and streetscape improvements, in order to promote walkability in the downtown areas of these older neighborhoods.

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 October 28, 2010 which indicates that the proposal is for the reconstruction and modification of an existing structure whose footprint will remain. Based on the submitted site plan, the Planning Office does not oppose the proposal. It does appear however that the entrance to the parking under the building is narrow for a turning car to access from a busy road. Reconfigure parking layout at new entry drive so that parking on west side of entrance does not overlap driveway. Provide architectural elevation of the front façade to the Office of Planning for review and approval. The property is

within the Essex Design Review Panel (DRP) area. Staff waived DRP review based on preliminary assurances that the façade would not change except for the entrance opening.

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 building was constructed in 1939, before the adoption of the Zoning Regulations, and there has been no plan to change the main footprint of the building. Thus, complying with today's front and rear setback requirements would essentially require razing the existing structure and starting over -- a prospect that would be neither economically feasible nor justified in this situation. I also find that Petitioner would suffer undue hardship and practical difficulty if the variances were denied.

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. Petitioner has obviously expended considerable resources in making significant improvements and upgrades to the property, including providing on site parking where there was once none. As such, I believe the granting of the variance requests will be in the public interest.

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 9th day of December, 2010 by this Deputy Zoning Commissioner that Petitioner's Variance requests as follows:

- From Section 232.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve a front yard setback of 6 feet in lieu of the required 10 feet; and

- From Section 232.3 of the B.C.Z.R. to approve a rear yard setback of 2 feet in lieu of the required 20 feet; and
- From Section 409.6 of the B.C.Z.R. to approve 9 on site parking spaces in lieu of the required 41; and
- From Section 409.9 of the B.C.Z.R. to permit handicapped parking in the public right-of-way in lieu of on site,

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. Provide architectural elevations of the front façade to the Office of Planning for review and approval prior to the issuance of any building permit.
3. Reconfigure the parking layout at new entry drive so that parking on the west side of the entrance does not overlap the driveway.

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