

IN RE: PETITION FOR VARIANCE

NWest side of Restaurant Park Drive North;
intersection of Red Run Blvd. & Restaurant
Park Drive North
4th Election District
4th Councilmanic District
(6 Restaurant Park Drive North)

Owings Mills Mall, LLC
Legal Owner/Petitioner
GMRI, Inc.
Lessee

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
*
* **CASE NO. 2011-0208-A**

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for consideration of a Petition for Variance. The Petition was filed by David H. Karceski, Esquire of Venable LLP on behalf of his client, Owings Mills Mall, LLC, the legal property owner, and GMRI, Inc., the lessee of the property. The Petitioner requests a variance from Section 235.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow the front building line of a commercial building to be as close as 5 feet to the front property line and 20 feet to the centerline of the street in lieu of the required 15 feet and 40 feet, respectively. The relief requested is more fully described on a site plan submitted and received into evidence as Petitioner’s Exhibit 1.

The record in this case reflects that the subject property was properly posted and advertised as required by the Baltimore County Zoning Regulations.

Appearing at the requisite public hearing in support of the variance request were Linda D. Nunn with NunnCo., Inc., a design and construction management consultant hired by Darden Restaurants, Inc., Matthew T. Allen with Bohler Engineering, the professional engineer who prepared the site plan of the property, and David H. Karceski, Esquire of Venable LLP, attorney for the Petitioner. There were no Protestants or other persons in attendance.

Testimony and evidence offered revealed that the subject property consists of 3.417 acres and is zoned BM-CT. The subject site is located in the Owings Mills restaurant park which is located adjacent to the Owings Mills Mall. It is an irregularly shaped parcel sandwiched between Red Run Boulevard and the off ramps from I-795. The property also has challenging topography.

Testimony further revealed that the Olive Garden restaurant is desirous of locating one of its restaurants at this site. The site is currently improved with a restaurant building which at one time housed the Tony Roma's restaurant. That restaurant chain closed its locations in Maryland and the building is vacant at this time. Olive Garden is desirous of tearing down the old Tony Roma's restaurant and constructing a brand new Olive Garden restaurant in its place. The Petitioner submitted into evidence as Petitioner's Exhibit 7A and 7B illustrative drawings of the new Olive Garden restaurant to be constructed on the site. In order to proceed with the construction of this new restaurant, the requested variances are necessary.

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 February 3, 2011 which indicates that the site is in a planned restaurant park in the Owings Mills Growth Area. The proposed tenant will replace an existing vacant restaurant building with a new restaurant building of a slightly different footprint. The proposed variance does not appear to be detrimental to the community. In fact, it will be an enhancement to the corridor and be a compliment to the existing restaurants in the park. Planning supports the variance request provided architectural elevations are submitted for review and approval prior to the application for building permit.

Based upon the testimony and evidence presented, I am persuaded to grant the request for 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.

I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioner.

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. Thus, the variances requested meet the requirements of Section 307 of the B.C.Z.R, as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 1st day of March, 2011, that the Petition for Variance relief from Section 235.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow the front building line of a commercial building to be as close as 5 feet to the front property line and 20 feet to the centerline of the street in lieu of the required 15 feet and 40 feet, respectively be and hereby is GRANTED, subject to the following restrictions which are conditions precedent to the relief granted herein:

1. Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the thirty (30) day Appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Architectural elevations of the proposed building shall be submitted to the Office of Planning for review and approval prior to the application for building permit.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed
TIMOTHY M. KOTROCO
Administrative Law Judge
for Baltimore County

TMK/pz