

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
N/S of West Timonium Road; 312'		
E of the c/l of Greenspring Drive	*	OFFICE OF ADMINISTRATIVE
8 <sup>th</sup> Election District		
3 <sup>rd</sup> Council District	*	HEARINGS FOR
<b>(56 West Timonium Road)</b>		
	*	BALTIMORE COUNTY
Edward I. Wight		
Legal Owner		
Timonium Road Property, LLC	*	
Contract Purchaser		
<i>Petitioners</i>	*	<b>CASE NO. 2012-0177-A</b>
* * * * *		

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed by Edward I. Wight, the property owner, and Timonium Road Property, LLC, the contract purchaser. The Petitioners are requesting Variance relief as follows:

- From Sections 255.1 and 238.2 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a side yard setback of 10 feet on each side in lieu of the required 30 feet setback; and
- From Section 409.6.A.1 of the B.C.Z.R. to permit 74 parking spaces in lieu of the required 99 parking spaces.

The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1A.

Appearing at the public hearing in support of the variance request were Nick Brader and Tom Pilon on behalf of Timonium Road Property, LLC, the contract purchaser, and Patricia A. Malone, Esquire attorney for the Petitioners. Appearing in opposition to the request was Eric Rockel, a concerned citizen. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R., and the file does not contain any letters of

opposition or protest.

Testimony and evidence revealed that the subject property is located on the north side of West Timonium Road immediately adjacent to the Maryland Transit Administration light rail tracks. The property comprises 1.1037 acres, more or less, and is zoned ML-IM. The property is currently being used as an office/warehouse use. The proposed use for the property is retail/carry out restaurant.

The property is improved with an existing 5,267 square feet building with a proposed building addition of 4,500 square feet. The details of the proposed addition are more accurately shown on Petitioners' Exhibit 1A, the site plan that was submitted and accepted into evidence. The Applicants are requesting a variance in order to provide flexibility for the addition to be constructed onsite. They are asking for 10 feet side yard setbacks on both sides of the subject property so as to allow the addition to be built on either side of the existing building. As the building is vacant at this time it is hoped that this flexibility will provide incentive for a new user to locate on this property. In addition to the side yard variance, the Applicants are also requesting a parking variance to approve 74 parking spaces in lieu of the required 99 parking spaces. This parking variance takes into account the 4,500 square feet proposed addition.

Appearing as an interested citizen was Eric Rockel, a long time resident of the surrounding community. Mr. Rockel frequently appears at hearings before this Office of Administrative Hearings. Mr. Rockel was not opposed to the addition being constructed at the property; however, he is concerned about the 10 feet setback on the east side of the property. This is the side of the property that is immediately adjacent to the MTA light rail tracks. Mr. Rockel is concerned that customers and visitors to the site could accidentally leave the paved portion of the parking lot with their vehicle and drive onto the light rail tracks in the way of the oncoming train. He stated that

there is little protection or barriers provided along that side of the property. Photographs of the subject property were submitted into evidence as Petitioners' Exhibits 2-6. Exhibit 6 is a series of photos, some of which show the area of the light rail tracks, over which Mr. Rockel expressed his concern.

It should be noted that there is a curb provided along that side of the Petitioners' property. The curb does not extend all the way to the entrance apron on West Timonium Road. Taking into consideration Mr. Rockel's concern, I believe it would be appropriate for the owner of the property, at the time that the new addition is constructed to extend that curbing out to the apron along West Timonium Road. This would provide a completely connected concrete barrier approximately 8-12 inches in height which would help to prevent automobiles from accidentally driving into the travel way of a light rail train. I shall impose that obligation as a condition of approval to the variance request.

Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. Comments were received from the Department of Planning dated February 13, 2012, which state:

"The Department of Planning has reviewed the petitioner's request and accompanying site plan. This department does not oppose the petitioner's request subject to the review of architectural elevations prior to the issuance of any building permits and the following:

1. This property is part of 2012 CZMP Issue 3-028. The existing zoning is ML-IM and the petitioner is requesting BM-IM.
2. Conformance with page "43, Buildings" of the *Hunt Valley-Timonium Master Plan*.
3. Provide a sidewalk connection to the public sidewalk on Timonium Road. Provide details of the location and screening of the proposed dumpster."

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 Petitioners.

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.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and after considering the testimony and evidence offered by the Petitioners, I find that Petitioner's variance request should be granted.

THEREFORE, IT IS ORDERED, this   10   day of April, 2012 by this Administrative Law Judge that Petitioners' Variance request as follows:

- From Sections 255.1 and 238.2 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a side yard setback of 10 feet on each side in lieu of the required 30 feet setback; and
- From Section 409.6.A.1 of the B.C.Z.R. to permit 74 parking spaces in lieu of the required 99 parking spaces,

be and are hereby GRANTED.

The relief granted herein shall be subject to the following:

1. The Petitioners may apply for a building permit and may be granted same upon receipt of this Order. However the Petitioners are 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 Petitioners will be required to return and be responsible for returning said property to its original condition.
2. Compliance with the ZAC comments made by the Department of Planning dated February 13, 2012, a copy of which is attached hereto and made a part hereof.
3. Curb and gutter shall be extended along the eastern property line out to West Timonium Road to provide a concrete barrier along the Maryland Transit Administration light rail tracks. This shall be installed at the time the new addition is constructed on the property, if not sooner.

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

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Signed \_\_\_\_\_  
TIMOTHY M. KOTROCO  
Administrative Law Judge  
for Baltimore County

TMK:pz