

<b>IN RE: PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
E/side of York Road at the NE	*	OFFICE OF ADMINISTRATIVE
corner of Landstreet Road		
<b>(2301 York Road)</b>	*	HEARINGS FOR
8 <sup>th</sup> Election District		
3 <sup>rd</sup> Council District	*	BALTIMORE COUNTY
York Road 2301, Inc.	*	<b>CASE NO. 2012-0178-SPHA</b>
Petitioner		

\* \* \* \* \*

**ORDER AND OPINION**

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Hearing and Variance filed by Eugene M. Lipman, Vice President, York Road 2301, Inc. The Petitioner is requesting Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to determine whether or not the Administrative Law Judge should approve:

- Abandonment of a General Development Planned Unit Development (PUD) approved in Case No. VIII-858;
- An amended plan in a M.R. zone to a plan approved in Zoning Case No. 95-377-SPHA;
- A modified parking plan for uses including a tile shop, and
- A freestanding enterprise sign of 150 square feet and 25' in height for a pad building.

In addition, Petitioner is seeking variance relief from the B.C.Z.R. as follows:

- From § 243.1 to permit a front building setback of 60' in lieu of the permitted 75';

- From § 243.2 to permit an existing side yard setback of 47' and proposed side yard setbacks of 18' and 11' in lieu of the permitted 50', and a rear setback of 30' in lieu of 50';
- From § 409.6A to permit 188 parking spaces in lieu of the required 232 parking spaces, and
- From § 450.4 Attachment 7(d) to permit a 220 square feet freestanding joint identification sign with a 25' height in lieu of the permitted 75 square feet and 12' height maximum.

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

Appearing at the public hearing held for this case was Eugene M. Lipman with York Road 2301, Inc., Jared L. Barnhart, PE with Daft McCune Walker, Inc., the professional engineer that prepared the site plan for this project, and Mitchell Kellman, also with Daft McCune Walker, Inc. John B. Gontrum, Esquire with Whiteford, Taylor & Preston, LLP, appeared as counsel for the Petitioner. The file reveals that the Petitions were properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. Eric Rockel of the Greater Timonium Community Council (GTCC) and Deputy People's Counsel Carole S. Demilio attended the hearing, and the file contains a letter from Peter Max Zimmerman, People's Counsel for Baltimore County, addressing certain concerns he had with the proposal.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. Comments were received from the Department of Environmental Protection and Sustainability (DEPS), dated March 5, 2012, indicating that the development of the property must comply with the Forest Conservation Regulations (§§ 33-6-101 through 33-6-122 of the

Baltimore County Code [B.C.C.]). In addition, a ZAC comment was received from the Department of Planning, dated April 5, 2012, which states in pertinent part the following:

“It is the understanding of this department that the petitioner has or plans to withdraw the special hearing request for a freestanding enterprise sign of 150 square feet and 25 feet in height for a pad building mentioned above. This department opposes this additional freestanding enterprise sign. Nonetheless, this office is not opposed to the petitioner withdrawing this portion of the special hearing request.

The Department of Planning does not oppose the following:

The petitioner’s request to abandon the previously approved Planned Unit Development known as *Global View PUD*, the requested reduced setbacks for the proposed restaurant use, as well as, requests to provide 188 parking spaces in lieu of the required 232 and a modified parking plan.

The following comments are offered and should be made a part of the Administrative Law Judge’s decision (where appropriate) regarding any relief granted:

1. Provide pedestrian connection from York Road and the unnamed slip road to the existing and proposed building(s).
2. Show the location of any dumpsters (existing and future) and provide details of the enclosure that will be provided for screening. The applicant shall use materials consistent with the primary building on the subject site. Masonry or other high quality materials are preferred to screen and enclose dumpsters.
3. Provide a detailed landscape plan that shows the plantings that will be used for screening, mitigation and site beautification.
4. Provide details (elevations, colors, type, etc...) of proposed signage for the site. Also provide photos of any existing signage that is to remain.
5. The applicant provided preliminary architectural elevations of the proposed façade for the existing building on 3/29/2012. The Department of Planning has requested that additional Arriscraft material be added.
6. All architecture and site improvements are subject to the Hunt Valley/Timonium Design Guidelines. All proposed improvements, site enhancements and changes to existing buildings shall comply with the aforementioned guidelines.”

The subject site is located in the Timonium area, and is approximately 6.17 acres in size.

The site is improved with an industrial building that has been vacant for some time, and the Petitioner now desires to have commercial uses on the property. The property is zoned MR, which is a rarely seen zoning designation that, pursuant to a legislative amendment in 2010, now

permits commercial uses in an MR zone, provided those uses would be permitted in the business zones which adjoin the property. In this case, the property is adjoined by properties zoned BR and BL, and the uses proposed by Petitioner (a tile shop and restaurant) are indeed permitted in those zones. The MR zone also requires a site plan review by the Planning Board, which supported the Petitioner's request at its meeting of May 3, 2012, provided the Department of Planning's ZAC comments are incorporated into the plan.

### **Special Hearing Requests**

Petitioner seeks a variety of special hearing relief, and its first request concerns abandonment of a general development PUD approval in Case No. VIII-858. In that case, by Order dated January 18, 2008, former Zoning Commissioner William Wiseman approved a PUD for this property which would have had a residential and commercial component, but given the severe market downturn in late 2008, the plan never came to fruition. As such, it certainly seems appropriate that the Petitioner be entitled to abandon that plan, which it has apparently determined is no longer economically viable.

Petitioner also seeks approval of a modified parking plan, pursuant to B.C.Z.R. § 409. On its site plan (Note 14), the Petitioner has indicated that 232 parking spaces are required at the site for the mixture of retail and restaurant uses. The Petitioner has provided 188 spaces, and further indicated that 24 off-site spaces would be available pursuant to a joint use or easement agreement with Baltimore County, which owns the property on which those spaces are located. Petitioner's engineer, Mr. Barnhart, indicated that he was unsure of the availability of these additional spaces located on County property, and for that reason believes that the parking variance should be for 188 spaces in lieu of the 232 required under the regulations.

There was no testimony or evidence presented at the hearing which would indicate that the parking provided for this site would be insufficient. As noted by Petitioner's counsel, the site

is in a sense isolated, and there would really be no convenient location for overflow parking. Given the Petitioner is providing over 80% of the required number of spaces, and may in fact be able to avail itself of the 24 nearby spaces located on County property, the relief requested does not seem out of line, and should be granted.

Finally, the Petitioner seeks approval of an amended plan in a MR zone. As indicated above, the Planning Board has recommended approval of the Petitioner's site plan, and I am inclined to follow their recommendation. *See B.C.Z.R. § 240.3.*

### **Variance Requests**

The Petitioner seeks a variety of variance relief to accomplish the transformation of the site from an industrial to commercial use. The first variance seeks approval of a 60' front building setback in lieu of the 75' required by the regulations. As indicated at the hearing, both Messrs. Barnhart and Kellman opined that the property in question was indeed unique in a zoning sense, given the orientation of the buildings on the site, and the fact that a "service road" is situated between the subject property and York Road. In fact, the presence of the service road not only renders the subject property unique, but it also creates a practical difficulty for the Petitioner concerning how it will gain the attention of passing motorists, and direct them to the site, which can only be entered through this service road, which runs parallel to York Road.

In this regard, the Petitioner also seeks a zoning variance to permit a 150 square foot freestanding joint identification sign with a 20' height in lieu of the 75 square feet and 12' height limitation set forth in the regulations. As noted above, the property is indeed unique, and if the zoning regulations were strictly enforced, the Petitioner would have a hard time drawing the attention of motorists on York Road. The situation is also exacerbated by the orientation of the proposed restaurant, the front of which faces north and is angled away from York Road. The Petitioner had earlier requested an additional freestanding enterprise sign for the restaurant site,

and also requested larger dimensions and height for the freestanding joint identification sign. Both of these requests were modified at the hearing, and the request for the freestanding enterprise sign was deleted in its entirety, as shown on the redlined plan marked Petitioner's Exhibit 1A. In these circumstances, the variance request seems reasonable, especially given the unique features of the site and the need to attract passing motorists' attention to the site, which is "tucked away" some distance from York Road.

Finally, the Petitioner seeks variance relief to permit an existing side yard of 47' and proposed side setbacks of 18' and 11' and rear setback of 30', all in lieu of the 50' required under the regulations. As counsel for Petitioner indicated, the setbacks in the MR zone are somewhat draconian, and are far greater than the applicable setbacks in the commercial zones which adjoin this site. Given that the County Council expressly permitted commercial uses in an MR zone which adjoins commercial zones, it does not seem unreasonable to grant variance relief as requested by the Petitioner. As shown on Exhibit 1A, the adjoining businesses are spaced some distance from the subject site and their orientation is also such that the variance relief requested will not negatively impact those uses.

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

Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People's Counsel*, 407 Md. 53, 80 (2008).

Petitioner has met this test, as indicated above.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED, this   15   day of May, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to determine whether or not the Administrative Law Judge should approve:

- Abandonment of a General Development Planned Unit Development (PUD) approved in Case No. VIII-858;
- An amended plan in a M.R. zone to a plan approved in Zoning Case No. 95-377-SPHA, and
- A modified parking plan for uses including a tile shop,

be and are hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from the B.C.Z.R. as follows:

- From § 243.1 to permit a front building setback of 60' in lieu of the permitted 75';
- From § 243.2 to permit an existing side yard setback of 47' and proposed side yard setbacks of 18' and 11' and rear setback of 30', all in lieu of the permitted 50';
- From § 409.6A to permit 188 parking spaces in lieu of the required 232 parking spaces, and

- From § 450.4 Attachment 7(d) to permit a 150 square feet freestanding joint identification sign with a 20' height in lieu of the permitted 75 square feet and 12' height maximum,

be and are hereby GRANTED.

The relief granted herein is subject to the following conditions:

1. The Petitioner may apply for its permit and may be granted same upon receipt of this Order, however the 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 will be required to return and be responsible for returning said property to its original condition.
2. Petitioner must comply with the environmental regulations set forth in the Department of Environmental Protection and Sustainability's comment, dated March 5, 2012, a copy of which is attached and made a part hereto.
3. Petitioner must comply with the comments set forth in the Department of Planning's memorandum, dated April 5, 2012, a copy of which is attached and made a part hereto.

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

\_\_\_\_\_Signed\_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB:dlw