

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(11311 McCormick Road)		
8 th Election District	*	OF ADMINISTRATIVE
3 rd Council District		
11311 McCormick, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	CASE NO. 2019-0413-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by 11311 McCormick, LLC, legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief from Sections 409.6.a.2 & 409.6.B.3 of the Baltimore County Zoning Regulations (“BCZR”): (1) to allow a total of 890 off-street parking spaces in lieu of the required 929 parking spaces; and (2) pursuant to Sections 102.2, 255.1 and 238.2 to allow a setback of 30 ft. between side facades of two (2) commercial buildings in lieu of the required 60 ft. A site plan was marked as Petitioner’s Exhibit 1.

Matthew Guers appeared in support of the petition. Thomas Sheckells of Morris & Ritchie Associates, Inc., also appeared as the Project Manager. His c.v. was accepted into evidence as Exhibit 2 and he was accepted as an expert. David H. Karceski, Esq. represented Petitioner. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Environmental Protection and Sustainability (“DEPS”).

The site is approximately 9.28 acres in size and is zoned ML-IM.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate

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

Cromwell v. Ward, 102 Md. App. 691 (1995).

Mr. Karceski was allowed to present the case by proffer since there were no protestants present. First, he introduced an Amended Petition for Variance, which was accepted into evidence. This Amended Petition removes the request for parking variance relief. Mr. Karceski explained that no variance relief was actually needed with respect to the number of parking spaces. This is because the Plan qualifies for the “transit adjustment” of BCZR Sec. 409.6.B.1.a. As Mr. Karceski explained, there is an MTA transit stop directly adjacent to the property on Schilling Road, and, as shown on the site plan, the corner of the property farthest from the MTA stop is only 808 feet distant. Therefore, when the proposed restaurants are built the farthest pedestrian entrance to either building will obviously be less than the 1000 foot limit set forth in the above-referenced section. The other requirement of this section is also satisfied. Mr. Karceski introduced an MTA schedule (Exhibit 3) that shows that a train comes to the adjacent MTA station every 20 minutes even during non-peak times, and comes every 15 minutes during peak times. This satisfies the 20 minute limit of the applicable section. As a result, the Petitioner is entitled to a 5% adjustment of the required number of parking spaces. In this case the required number of spaces would be 929. After the 5% adjustment the required number is only 883 and the Plan in this case provides for 890 spaces. Mr. Sheckells testified that he personally met with Joe Merrey in the Permits office and that Merrey confirmed that the Petitioner was entitled to the transit adjustment.

With respect to the remaining variance relief, Mr. Karceski explained that this property lies within the boundaries of the Hunt Valley / Timonium Community Master Plan, which aspires to provide harmonious, aesthetic development. He further explained that the existing site was

developed a couple decades ago and has large landscaped buffers around the perimeter, as well as numerous wide, landscaped and lighted pedestrian walkways. The property is therefore unique. Aerial photos of the site were introduced and accepted into evidence as Exhibits 4 and 5. A series of ground level photos with an accompanying site drawing were accepted into evidence as Exhibit 6 A-T. These photos show the buffers and pedestrian pathways.

If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty and hardship. Mr. Karceski explained that if these areas were paved over they could easily comply with the required 60 foot side setbacks. However, he explained that he and the plan engineers have met extensively with Wally Lippincott of the Department of Planning and that Mr. Lippincott agrees that it would be preferable to maintain the existing buffers and walkways to the maximum extent possible. The DOP comments state that there is no objection to the requested setback variance relief “subject to the sidewalk improvements” described in the DOP comments. Mr. Karceski explained that these DOP comments have been incorporated into the red-lined site plan (Exhibit 1). I therefore find that the requested variance relief is sensible and appropriate and will result in a more accessible and aesthetically pleasing development. Finally, I find that the variance can be granted in harmony with the spirit and intent of the BCZR, and in such manner as to grant relief without injury to the public health, safety and general welfare. This is demonstrated by the absence of County and/or community opposition.

THEREFORE, IT IS ORDERED, this **15th** day of **October, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance from Baltimore County Zoning Regulations pursuant to Sections 102.2, 255.1 and 238.2 to allow a setback of 30 ft. between side facades of two (2) commercial buildings in lieu of the required 60 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. Prior to issuance of Permits, Petitioner must comply with ZAC comments submitted by the DEPS, a copy of which is attached hereto and made a part hereof.
3. The sidewalks depicted on the redlined site plan (Exhibit 1) are for illustrative purposes only but the Petitioner shall work in good faith with the DOP to address any surface and/or sub-surface issues that may arise during construction for the purposes of conforming the sidewalks as closely as possible to the site plan.

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

Signed
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/sln