

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N/E Corner of Marriot Lane and Liberty Road (MD Rte. 26)	*	ZONING COMMISSIONER
(8208 Liberty Road)	*	OF
2 nd Election District	*	ZONING COMMISSIONER
4 th Council District	*	Case No. 2010-0224-A
8208 Liberty Road, LLC	*	
<i>Petitioner</i>	*	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owner of the subject property, 8208 Liberty Road, LLC, by Gerald Jones, its managing member, by and through their attorney, Diane Leigh Davison, Esquire. Petitioner requests variance relief from Sections 238.1 and 238.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a front yard setback of 23 feet in lieu of the required 25 feet and a rear yard setback of 15 feet in lieu of the required 30 feet for a proposed one-story Class B Office Building. The Petitioner also seeks approval to allow a portion of access and drive aisle to be located in a narrow portion of the property zoned R-O located next to the northern property line. The subject property and requested relief are more particularly described on the amended redlined site plan¹, which was accepted into evidence and marked as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the request on behalf of the property owner were Errol A. Ecker, project manager, and Bernadette L. Moskunas, Vice President of Site Rite Surveying, Inc., the consultant who prepared the site plan and conducted a field survey of the property. The Petitioner was represented by Howard L. Alderman, Jr., Esquire of Levin & Gann, P.A. There were no Protestants or other interested persons present. It

¹ At the request of the Office of Planning, in its Zoning Advisory Committee (ZAC) comment, the plan was amended to reflect a right-of-way dedication to Baltimore County that runs along the western edge of the site (adjacent to Marriot Lane) for future sidewalk location.

is to be noted that a letter supporting the variances needed to accommodate an office building at this location was received from Peirce Macgill, a Commercial Revitalization Specialist, with the Department of Economic Development for Baltimore County. *See* Petitioner’s Exhibit 3.

Testimony and evidence revealed the subject property is a somewhat quadrilateral shaped parcel located at the northeast corner of Liberty Road and Marriot Lane just east of Rolling Road in Randallstown. Mr. Alderman provided a detailed history of this unimproved modest corner 0.548-acre (23,882 square foot) tract split-zoned B.R.-A.S. and R-O. The predominant zoning of the property is B.R.-A.S., with a narrow strip along the northern boundary zoned R-O. This section of Liberty Road from Marriot Lane to the east is predominantly commercial and retail uses. To the west and south are the County and State roadways. Immediately adjacent to the property to the north are residential dwellings in the R-O zone. The only access available to this site is from Marriot Lane at the northwest corner some 200 feet northeast of Liberty Road. This finding is corroborated by the State Highway Administration’s correspondence (February 16, 2010) contained in the file denying proposed egress/ingress points at other locations for the proposed center.

The subject of the instant petition relates to the proposed 2,196 square foot Class B – “JBL Center” – that will front Marriot Lane and require eight (8) parking spaces (11 are provided). A Class B Office Building is defined in Section 101 of the B.C.Z.R. as: “A principal building used for offices and which is not a Class A office building”. A Class B Office Building is permitted in the B.R.-A.S. zone as a matter of right.² As noted above, a portion of the office building’s access is proposed in a sliver of property, zoned R-O. The building and parking

² B.C.Z.R. Section 236.1.A – Business, Roadside (B.R.) references as permitted uses those found in the Business Major (B.M.) zones. Section 233.1 likewise references the Business, Local (B.L.) zones. Section 230.1.A.6 identifies as permitted uses “offices and office buildings”.

spaces, however, as illustrated on the site plan (Exhibit 1) are located wholly within the B.R.-A.S. zone. While a Class B Office Building can be approved in a R-O zone, pursuant to Section 204.3 of the B.C.Z.R., no such use is proposed here. The Zoning Advisory Committee (ZAC) comments received from the State Highway Administration are clear that no access would be approved directly onto Liberty Road or on Marriot Lane in proximity to its intersection with Liberty Road. The testimony offered described the access proposed as the only other viable location given site distance considerations on Marriot Lane. Pursuant to the public hearing held on this petition, it is clear that the portion of the drive aisle can be approved in the R-O zone pursuant to the Zoning Commissioner's Policy Manual (ZCPM) Section 102.6A.4. There is no other approvable location for access to the subject property and, as depicted on the site plan, only approximately one-half of the drive aisle is located within the R-O zoning designation. In my judgment, this proposal complies with the requirements of the B.C.Z.R. and will not cause detrimental impacts to the health, safety and general welfare of the locale. In sum, roads are permitted as accessory uses in an R-O zone.

Turning next to the variance request, similar evidence was offered in support. The site is uniquely shaped, resembling an upside down "L". The southern leg along Liberty Road is 114 feet wide and then tapers to a 60 foot width in just 150 feet before reaching the northern portion of the "L" that is 50 feet wide and runs a distance of 199 feet to the east away from Marriot Lane. These inherent characteristics are illustrated on the site plan and are features not shared by other properties in the area. It is the property's shape and a 20' wide x 210' long strip of land along Marriot Lane that has been taken for future highway widening coupled with the difficulties in obtaining access to a public right-of-way that drives the need for variance relief. Suffice it to say, these characteristics create substantial and unusual architectural challenges in locating a

building on the site that will provide a reasonable and significant use. *See, Belvoir Farms v. North*, 355 Md. 259 (1999) and *White v. North*, 356 Md. 31 (1999). The building has been pushed back towards other commercial uses and designed in an “L” shaped to fit the lot with the most space (30 feet wide) at the southern end of the site near Liberty Road but then narrows or is “stepped back” at its northern terminus (22 feet wide). I find the building and parking field have been designed in such a manner as to provide for the minimum amount of zoning relief necessary. A denial of the requested relief given these facts would be an unnecessary or unwarranted hardship on the Petitioner, as the property would be so constrained that no reasonable use would be viable.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 26th day of April 2010 that the Petition for Variance seeking relief from Sections 238.1 and 238.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a front yard setback of 23 feet in lieu of the required 25 feet and a rear yard setback of 15 feet in lieu of the required 30 feet for a proposed one-story Class B Office Building, in accordance with Petitioner’s Exhibit 1, be and the same is hereby GRANTED; subject to the following conditions:

1. The Petitioner is advised that they may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of 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. The Petitioner shall landscape the site in accordance with the landscape plan to be prepared, reviewed and approved by the Office of Planning and the County’s Landscape Architect.

3. As shown on Petitioner's Exhibit 1, the project shall proceed without the construction of sidewalk. The Petitioner shall, however, dedicate to Baltimore County an easement sufficient to permit the future construction of a sidewalk along the western edge of the property adjacent to Marriot Lane.

IT IS FURTHER ORDERED, that a determination to permit a portion of the access and two-way drive aisle located in a narrow portion of the property zoned R-O located next to the northern property line, be and is hereby APPROVED.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code (B.C.C.).

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner for
Baltimore County