

IN RE: PETITIONS FOR SPECIAL HEARING, *	BEFORE THE
SPECIAL EXCEPTION & VARIANCE	ZONING COMMISSIONER
W/S York Rd. (MD Rte. 45), 106' S c/line of *	
Washington Street	
(2340 & 2342 York Road) *	OF
8 th Election District *	BALTIMORE COUNTY
3 rd Council District	
	Case No. 2010-0078-SPHXA
Dennis G. Foster, Jr., D.D.S., et ux *	
Petitioners *	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Zoning Commissioner for consideration of Petitions for Special Hearing, Special Exception and Variance filed by the owners of the property, Dr. Dennis G. Foster, Jr. and his wife, Carol R. Foster, through their attorney Arnold E. Jablon, Esquire with Venable, LLP. The Petitioners request a special hearing to amend the previously approved site plan in prior Case No. 99-52-XA, to permit an addition to an existing Class B office building (2340 York Road) and an existing Class A office building (2342 York Road). In addition, special exception relief is requested pursuant to Section 204.3B2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a Class B office building at 2342 York Road. Lastly, variance relief is sought to permit: **(1)** a side yard setback of 7.2 feet in lieu of the permitted 20 feet for 2342 York Road, pursuant to B.C.Z.R. Section 204.4C4; **(2)** to permit 100% of the adjusted gross floor area at 2342 York Road to be occupied by medical offices in lieu of the permitted 25%, pursuant to B.C.Z.R. Section 204.3B2A; **(3)** to permit a two-way driveway with a width of 8 feet in lieu of the required 20 feet at 2342 York Road, pursuant to B.C.Z.R. Section 409.4A; **(4)** to permit office buildings located on 2340 and 2342 York Road to be attached, pursuant to B.C.Z.R. Section 204.4C8, if applicable; and **(5)** to provide relief from B.C.Z.R.

Section 204.4C9 (a), (b), and (c) 1, for 2340 and 2342 York Road, by not requiring all parking areas abutting the adjacent residential zone from being screened by an opaque fence, wall or berm in association with plantings, to not require any screening height to be at least 5 feet, and to not require a 20 foot landscape buffer. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the requests on behalf of the Petitioners were Arnold Jablon, Esquire, who produced as expert witnesses David Flowers, land planner, who is familiar with the site, and Pattianne Smith, a registered professional land surveyor who prepared the site plan for these properties. Both Mr. Flowers and Ms. Smith were accepted as experts as to Sections 204, 409, 502.1 and 307 of the B.C.Z.R. Eric Rockel appeared as an interested citizen on behalf of the Greater Timonium Community Council and participated at the hearing. Mr. Rockel stated that he did not oppose the requested relief and indicated he had spoken to a representative of the local community (who, although did not live in the residential community directly behind the subject properties, was active as a community representative in the area). Mr. Rockel stated that there was no opposition to the requested relief. There were no other interested persons present.

There were no adverse Zoning Advisory Committee (ZAC) comments received from any of the County reviewing agencies. The Office of Planning and the State Highway Administration (SHA) did not oppose the requested variances. *See* comments, dated October 21, 2009 and September 22, 2009, respectively. It should also be noted that Stephen E. Weber, Chief, Bureau of Traffic Engineering, Department of Public Works, provided comments following his review to People's Counsel. His comments concerning the adjoining property, at

2338 York Road, while not included in the relief as outlined above, is peripherally involved, as well as a "paper" alley that runs parallel and behind the subject properties. These issues will be addressed below.

Testimony and evidence offered on the two (2) properties known as 2340 and 2342 York Road disclosed that their total area is 0.28 acres, more or less, zoned R-O. 2340 York Road is 0.18 acres in size and is a rectangular shaped parcel; 2342 York Road is 0.10 acres and also rectangular in shape. Both are immediately adjacent to each other and located on the west side of York Road between Washington Street in Timonium. Both are improved with existing office buildings; the building at 2340 consists of approximately 2200 square feet and the building at 2342 consists of approximately 1075 square feet. 2340 York Road was the subject of two (2) previous zoning cases. Petitioners' Exhibit 1 (the site plan) illustrates this history and describes the subject properties and their uses which is briefly outlined. In Case No 78-190-XA, a special exception was granted to permit an office building and variances to permit a side yard setback of 8 feet in lieu of the then required 25 feet and to permit a front yard setback of 26 feet in lieu of the then required 30 feet. *See* Petitioners' Exhibit 2. In Case No. 99-52-XA, a special exception to permit a class "B" office building was granted and variances to permit a side yard setback of 9 feet in lieu of 10 feet, to permit a two-way travel lane with a width of 15 feet in lieu of 22 feet, and to permit 100% of total adjusted gross floor area to be occupied by medical offices in lieu of the maximum 25%, were all granted. *See* Petitioners' Exhibit 3.

Dr. and Mrs. Foster own both 2340 and 2342 York Road. Dr. Foster's dental office is located in 2340 York Road. Dr. Foster now proposes to connect the buildings located on each lot so that there would in effect be one building. The office building on 2340 is severely cramped for space and the building on 2342 would provide the additional space needed. It

would literally be a practical difficulty to not connect the buildings—having to go outside of one to enter the other. The addition proposed is 570 square feet and would connect the south side of 2342 to the north side of 2340, as more particularly shown on Exhibit 1. Dr. Foster has retained Sanders Design, architects, who prepared elevation drawings submitted as Petitioners' Exhibit 5. These show the exterior of the two (2) buildings after their attachment. Parking is provided to the rear of 2342 and to the side and rear of 2340, all presently existing. No additional impervious area is proposed.

Sole access to 2340 is from York Road. Sole access to 2342 is by a 12 foot use-in-common alley, to the rear of the properties, from Washington Street. There is no access from York Road to 2342 and no access to 2340 from the alley. This alley is unpaved and is usable only by 2344 York Road and 2342 York Road. 2344 York Road, on the corner of Washington Street and the alley, is presently being improved with a new building and is not owned by the Fosters. The alley, which extends as shown on the site plan beyond 2344 and 2342 York Road, has never been used, and is no more than a "paper alley". In fact, the adjoining properties on both sides of the alley have utilized it to its centerline for accessory structures or parking. The portion of the alley used for access terminates at the joint property line of 2340 and 2342 York Road.

The purpose of these petitions is to seek a special exception to permit medical offices at 2342 York Road; variances to permit 2342 York Road to be used 100% for medical offices, as is 2340 York Road; to permit a side yard setback of 7.2 feet from the building on 2342 York Road to the property line separating 2342 and 2244 York Road; to permit a two-way driveway with a width of 8 feet as to 2342 York Road, which presently exists from the alley onto the site; to permit the attachment of the two (2) buildings, if otherwise required; and to provide certain relief

from the landscaping requirements of B.C.Z.R. Section 204.4C9; and for a special hearing to amend the site plan approved in case No. 99-52-XA.

Mr. Flowers confirmed that the properties are zoned R-O, surrounded by R-O to the north and south. Adjoining 2340 York Road to the south is 2338 York Road, also owned by Dr. Foster, and is currently being used for offices. Immediately to the north, 2344 York Road, as stated above, is not owned by Dr. Foster, is a new building under construction and near completion. It is not clear whether the building will be used as a single-family dwelling or for office use. Out of an abundance of caution, Mr. Jablon explained that the request for the side yard setback of 7.2 feet in lieu of 20 feet was because Section 204.4C4 requires a 10 foot side yard setback except if the adjacent property is predominantly residentially zoned, residentially used *or* is adjacent to a residential street, in which case the required setback is 20 feet.

Mr. Jablon further explained the proposed addition attaching the buildings located on 2340 and 2342 York Road as well as the use of 2342 York Road as medical offices would require 18 parking spaces. On both properties there are 12 existing parking spaces. However, the use at 2338 York Road requires only five (5) spaces, but 12 spaces are provided. Pursuant to Section 409.7B2, 2338 York Road is within 500 feet of 2340 and 2342, thus the extra seven (7) parking spaces may be used to conform with the requisite parking for 2340 and 2342 York Road. 2338 York Road is not part of this hearing and its only connection is to use its excess parking to satisfy the parking requirements for 2340 and 2342 York Road. Therefore, no parking variance is needed.

In support of the variances, Petitioners' attorney, Mr. Jablon, proffered and Mr. Flowers confirmed, that the property has several unusual characteristics that drive the need for the variances. Most notable, as shown on the site plan, are the size, shape and location of the subject

properties. 2342 York Road is landlocked but for the alley to the rear. Both structures on 2340 and 2342 York Road predate the zoning regulations and the properties are very narrow and elongated. It is important also that the buildings are presently being used as offices and that there is not proposed any additional employees, parking spaces or impervious areas to be created.

In terms of practical difficulty, Mr. Jablon pointed out that there is no where else an access can be provided to 2342 York Road other than by the alley. If the landscaping requirements of Section 204.4C9 (a) – (c) (1) are required, the alley would be foreclosed and the site landlocked. After all, he notes that the alley is only 12 feet wide. This also is the reason for the requested relief for an 8 foot width of the two-way driveway. To do otherwise, access would be literally denied. And, of course, testimony and evidence submitted underscores that the current conditions have been longstanding. As for 2340 York Road, there already exists landscaping, which will not be disturbed. *See* Petitioners' photographic Exhibit 6, (1 – 11), which graphically and succinctly shows the existing conditions between the houses and the subject properties. It is also to be noted that a fence already exists between the houses adjoining the subject properties and the alley.

The 7.2 foot setback also currently exists. There is no change proposed to that side of the building. Mr. Jablon, with the concurrence of Mr. Rockel, proffered the testimony of both Mr. Flowers and Ms. Smith who would testify that it was their opinion that there would be no adverse impact on the community if any of the variances requested were to be granted and there would be no detriment to the health, safety or general welfare of the locale. Finally, to specifically address the request to permit 100% of the building at 2342 York Road as medical offices they opine that the request conforms to the previously cited approval in Case No. 99-52-XA. Mr. Flowers would testify that the granting of this variance will have no detrimental impact

on the surrounding locale and would not be detrimental to the health, safety or general welfare of the locale and would have no negative impact on the community. Mr. Flowers would testify that it was his opinion that the strictures of Section 307.1 were satisfied and that a practical difficulty would exist if the variances were to be denied. He would testify that in his opinion the properties were unique in a zoning sense.

As to the request for a special exception for 2342 York Road, Mr. Flowers would further opine that the proposed use as a medical office building would conform to and meet all of the criteria set forth in B.C.Z.R. Section 502.1 as interpreted by the *Court of Appeals in People's Counsel for Baltimore County v. Loyola College* 406 Md. 54 (2008), as there would be no adverse impact if granted and, if granted, would be consistent with the properties' zoning classification and within the spirit and intent of the B.C.Z.R. Further, he would testify that it was his opinion that the proposed use would not cause any greater adverse impact or effects at this location than elsewhere in the same zone. He pointed to 2340 York Road as evidence of this. Mr. Rockel also agreed that the current dental office at 2340 York Road was not a problem and has operated without complaint. He did not oppose the requested special exception or the variances.

As to the request to amend the previously approved site plan in Case No. 99-52-XA, if B.C.Z.R. Section 502.1 were to be applied, Mr. Flowers would testify that each of the conditions prescribed are satisfied as well, i.e., there would be no adverse impact if granted, and the relief, if granted, would be consistent with the properties' zoning classification and within the spirit and intent of the B.C.Z.R. and Case No. 99-52-XA.

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, and as stated

above, indicated no opposition but did recommend that the Hunt Valley/Timonium guidelines be followed with respect to style, building materials, and design. Mr. Jablon stated that he had no objection. Due to both properties being located on York Road, a State road, State Highway Administration provided its comment and specifically does not oppose the requested relief.

Mr. Weber's comments posted to Mr. Zimmerman in an e-mail, dated October 30, 2009, are also made part of the case file and raised a number of concerns. While clear that Mr. Weber is not aware of the properties zoning history or the historical use of the alley, Mr. Jablon agreed to address Mr. Weber's concerns about certain parking spaces located at 2338 York Road that extend into the alley and that they be moved. *See* Exhibit 1. On behalf of his clients, Mr. Jablon agreed that these spaces be moved out of the 12 foot wide use-in-common alley and entirely within the bounds of 2338 York Road. The site plan was amended to reflect this change. It should be noted, however, that the paved area on which they exist is pre-existing. Mr. Weber also indicated his concern that the alley should be "closed" by way of a road closure. However, both Mr. Jablon and Mr. Rockel, who have a great deal of expertise and knowledge in this province, stated that to require this would serve no useful purpose. The use of the alley has not changed in any way for 50 years, if not more. Mr. Rockel stated his opposition to requiring this as a condition of approval.

Finally, inasmuch as the Petitioners effectively own all the lots at issue, I believe the doctrine of zoning merger applies. B.C.Z.R. Section 204.4.C.8 provides that the office building shall be the only principal building on the lot on which it is situated and shall not be attached to another building. The Petitioners request that they be permitted to attach the two (2) existing buildings by the proposed addition, and request a variance to do so, if required. I find that a variance is not required. Zoning merger occurs as a result of a property owner's use of

contiguous lots under the same ownership. *See, Friends of the Ridge v. Baltimore Gas & Electric Co*, 352 Md 645 (1999) where the Court stated:

“ . . . We shall hold that a landowner who clearly desires to combine or merge several parcels or lots of land into one larger parcel may do so. One way he or she may do so is to integrate or utilize contiguous lots in the service of a single structure or project . . .”. *See also Remes v. Montgomery County*, 387 Md. 52 (2005).

Both lots are owned by the same parties and effectively are merged by their use. For zoning purposes, 2340 and 2342 York Road shall be considered as one lot, and, therefore, no variance is necessary to B.C.Z.R. Section 204.4.C.8. Alternatively, even if the doctrine of zoning merger does not apply, I find that the proposed addition satisfies the criteria required by Section 307.1 and would be in strict harmony with the spirit and intent of zoning regulations, specifically Section 204.4.C8.

Considering all the testimony and the evidence presented, I find special circumstances or conditions exist that are peculiar to the land or structure that is the subject of the variances requested. Clearly, the subject property has constraints that are inherent to the property and have existed for a significant period of time. Its rectangular shape, their frontage on York Road and their rear on this above described 12 foot wide alley, that 2342 York Road is landlocked but for the alley, and the location of the existing, longstanding, structures on the property, leads me to find the properties unique in a zoning sense. I further find that the strict application of limitations imposed by B.C.Z.R. Sections 204.3B2A, 204.4C4, 204.4C8, 204.4C9 and 409.4A would cause practical difficulty.

I find that the variances can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. Thus, I find that these variances can be granted in such a manner as to meet the

requirements of Section 307.1 of the B.C.Z.R., as established by *Cromwell v. Ward*, 102 Md. App 691 (1995).

Further, I find the proposed medical office at 2342 York Road will not be detrimental to the community. I find that the proposed use meets the special exception criteria set forth in Section 502.1 of the B.C.Z.R. I find that the use at the subject location will not have any adverse impacts above and beyond those inherently associated with such use irrespective of its location within the zone.

Further, I find that the amendment of the site plan approved and made part of Case No. 99-52-XA should be granted. I find that the proposed amendment meets the criteria of Section 502.1 of the B.C.Z.R. and will not adversely affect the neighborhood. There will be no adverse impact on the health, safety and welfare of the neighborhood.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this _____4th day of January 2010, that the Petitioners' request to connect the office buildings at 2340 and 2342 York Road is permitted as of right and, therefore, their request for variance from the Baltimore County Zoning Regulations (B.C.Z.R.) Section 204.4.C.8, shall be dismissed as MOOT; and

IT IS FURTHER ORDERED that the Petitioners' requests for: (1) a Special Exception to permit a Class B office building pursuant to B.C.Z.R. Section 204.3B2; (2) for Special Hearing approval to amend the previously approved site plan in prior Case No. 99-52-XA to allow an addition to the existing Class B office building, and (3) Variances to permit: (i) 100% of adjusted gross floor area to be occupied by medical offices in lieu of the permitted 25% pursuant

to B.C.Z.R. Section 204.3B2A as to 2342 York Road; **(ii)** a side yard setback of 7.2 feet in lieu of the permitted 20 feet pursuant to B.C.Z.R. Section 204.4C4 as to 2342 York Road; **(iii)** a two-way driveway with a width of 8 feet in lieu of the required 20 feet pursuant to B.C.Z.R. Section 409.4A as to 3242 York Road; **(iv)** all parking areas abutting residential zones shall not be required to be screened by an opaque fence, wall or berm in association with plantings as otherwise required by B.C.Z.R. Section 204.4.C.9.a; **(v)** zero (0) foot minimum screening height in lieu of the required 5 feet as otherwise required by B.C.Z.R. Section 204.4.C.9.b; **(vi)** zero (0) foot landscape buffer in lieu of the required 20 feet from any property line which abuts any property which is predominantly residentially zoned, residentially used or which abuts any residential street as otherwise required by B.C.Z.R. Section 204.4.C.9.c(1); and **(vii)** should the doctrine of zoning merger not apply, the Variance to attach the existing buildings at 2340 and 2342 York Road, as otherwise not permitted by B.C.Z.R. Section 204.4.C.8; be and are all hereby GRANTED, subject to the following:

1. Petitioners may apply for a building permit and be granted same upon receipt of this Order; however, the Petitioners are 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 an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
2. Petitioners shall follow the Hunt Valley/Timonium guidelines with respect to style, building materials, and design as otherwise set forth in the Hunt Valley/Timonium Master Plan and submit drawings to the Office of Planning for review and approval prior to application for building permit.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code and filed within thirty (30) days of the date of this Order.

____SIGNED____
WILLIAM J. WISEMAN, III
Zoning Commissioner
of Baltimore County