

**IN RE: PETITION FOR VARIANCE**  
S side of Eastern Boulevard at W side  
of Marie Avenue  
15<sup>th</sup> Election District  
7<sup>th</sup> Councilmanic District  
(15, 23, 25 and 27 Eastern Blvd.)

**Riverview Square, LLC and  
Epimetheon Investments, LLC**  
*Petitioners*

\* BEFORE THE  
\* DEPUTY ZONING  
\* COMMISSIONER  
\* FOR BALTIMORE COUNTY  
\*  
\* **CASE NO. 2010-0362-A**  
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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owners of the subject property, Riverview Square, LLC and Epimetheon Investments, LLC. Petitioners are requesting Variance relief from Sections 409.6.A.2 and 450.4 Attachment 1.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit 97 parking spaces in lieu of the required 154 parking spaces, and to permit 2 freestanding joint identification signs in lieu of the permitted 1 freestanding joint identification sign for an existing restaurant, proposed restaurant and proposed retail stores. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the requested variance relief were Tony Akaras, Managing Member, on behalf of Petitioners Riverview Square, LLC and Epimetheon Investments, LLC, and David Billingsley with Central Drafting & Design, Inc., Petitioners’ zoning and land use consultant. Also appearing in support of the requested relief was Andrea Van Arsdale, Revitalization Director with the Baltimore County Department of Economic Development. There were no Protestants or other interested persons in attendance.

This matter was scheduled for a hearing on September 2, 2010 and as a preliminary matter, Mr. Billingsley indicated that an additional variance request was needed, but was not included in the original Petition or the sign posting or newspaper advertising providing notice of the subject matter of the hearing. Mr. Billingsley requested to amend the Petition to include a request for variance from Section 409.8.A.4 of the B.C.Z.R. to permit a parking space with a 5 foot setback to public street right-of-way in lieu of the required 10 feet. As stated earlier, there were no interested citizens in attendance; however, notice of this aspect of the request for variance relief had not been provided to neighbors or interested persons. Thus, the undersigned permitted the amendment and allowed the hearing to proceed as to all the requested relief, but directed that Mr. Billingsley re-post the property for at least 15 days to include the amended variance relief, and to re-schedule the case beyond that 15 day period in order to give any interested persons the opportunity to respond to that request for variance. The matter was reconvened on September 20, 2010; there were no interested persons in attendance on this hearing date and the matter was adjourned and the evidence closed.

Testimony and evidence offered in the case revealed that the subject property is irregular shaped and is comprised of four parcels. As shown on the Baltimore County Tax Map and the SDAT Real Property Data Search printouts that were marked and accepted into evidence as Petitioners' Exhibits 2A through 2E, the property consists of Parcel 219 (0.694 acre), Parcel 1039 (0.532 acre), Parcel 455 (0.459 acre), and Parcel 701 (0.268 acre) for a total of approximately 2 acres of land, more or less, zoned B.L. Mr. Billingsley proffered that Petitioner Epimetheon Investments, LLC acquired Parcel 219 in 2003 and the remaining parcels were acquired by Petitioner Riverview Square, LLC more recently in March, 2010. As shown on the aerial photograph that was marked and accepted into evidence as Petitioners' Exhibit 3, the

property is located at the southwest corner of Eastern Boulevard and Marie Avenue in the Essex area of Baltimore County. It is also bordered to the south by Virginia Avenue and is approximately 500 feet east of the bridge that crosses Back River toward Eastern Avenue.

Further evidence indicated that the subject property is improved with several buildings that are depicted in the photographs that were marked and accepted into evidence as Petitioners' Exhibits 4A through 4F. This includes the existing one-story Essex Diner building at 15 Eastern Boulevard (2,031 square feet), a large existing one-story block building that was once a bingo hall at 25 Eastern Boulevard (15,385 square feet), and two smaller one-story block buildings at 23H Eastern Boulevard and 27 Eastern Boulevard, respectively, situated on each side of the former bingo hall. The diner has existed at the location since approximately 1992, with the other buildings going back as far as possibly the 1940's.

At this juncture, Petitioners desire to upgrade and aggressively redevelop the property. The diner would remain, as would the former bingo hall building; the other two buildings would be razed. The former bingo hall building would be gutted and renovated extensively in the interior and exterior to make way for walkable retail shops, and a proposed one-story building of approximately 4,500 square feet for additional shops and restaurants would be added to the existing building. Although Petitioners have requested a sign variance, the main issue with the project appears to be parking. Petitioners are requesting a parking variance in order to permit 97 spaces in lieu of the required 154 spaces. They also plan to have parking with a 5 foot setback to a public street right-of-way in lieu of the required 10 feet.

In support of the requested relief, Mr. Billingsley emphasized that the proposed project is a redevelopment of an existing site. The improvements and available parking are already existing and the largest improvement -- the former bingo hall -- dates back from the 1940's.

These features, combined with the irregular shape of the property, limit the number of parking spaces that can be provided. Mr. Billingsley also explained that the area to the west of the diner, between Virginia Avenue and Eastern Boulevard, is essentially a “dead” area, in the sense that there are no additional parking improvements that would make sense in that part of the property. Another point regarding parking is that the number of spaces is further reduced by the landscape buffer to the east of the property along Marie Avenue. Although the property currently has about 32 parking spaces (16 spaces back-to-back) adjacent to the road, Petitioners’ proposal is to have islands and sidewalks with landscaping, which eliminates the back-to-back parking and reduces the number of spaces in that area by half to 16 total spaces.

In addition, Mr. Billingsley indicated he does not believe parking will be significantly impacted because the idea of the project is to have a walkable shopping center, combined with the fact that there is mass transit in the area as well as a large Park & Ride parking area across the street off Wagners Lane, as depicted in the aerial photograph that was marked and accepted into evidence as Petitioners’ Exhibit 5. Mr. Billingsley also submitted colored renderings of the proposed “Gateway Center” shopping center that were marked and accepted into evidence as Petitioners’ Exhibits 6A and 6B. These renderings show the potential for the redevelopment of the property, with the former bingo hall transformed into a vibrant shopping complex, and a focal point for this area of the Essex community.

In support of the requested sign variance for two freestanding joint identification signs in lieu of the permitted one sign, Mr. Billingsley pointed out that although this redevelopment project is for one property, it really consists of two separate areas of development. On the one hand, there is the existing Essex Diner that has been at the subject location for almost 20 years and is popular in the community, and which already has an existing freestanding 70 square foot

sign in front of the building, near the corner of Eastern Boulevard and Virginia Avenue. A photograph of the existing sign was marked and accepted into evidence as Petitioners' Exhibit 8. On the other hand, there is the planned area of redevelopment at what amounts to the other end of the property along Eastern Boulevard and its intersection with Marie Avenue. Mr. Billingsley indicated that, as a practical matter, this separate shopping area requires its own signage. Although there might be some overlap between customers of the diner and the new shopping center, most of the time, they will be their own single destinations. Hence, there is a need for an additional freestanding joint identification sign of approximately 100 square feet to accommodate all the proposed retail shops and restaurants.

Also appearing in support of the project was Andrea Van Arsdale with the Department of Economic Development. In addition to echoing Mr. Billingsley's comments in support of the overall project and the related variance requests, Ms. Van Arsdale also submitted a letter of support dated August 26, 2010, which was marked and accepted into evidence as Petitioners' Exhibit 7. The letter related that the subject property is within the Essex Commercial Revitalization District and as such is a priority area for reinvestment and redevelopment. Ms. Van Arsdale also wrote that the project will redevelop a vacant and functionally obsolete building, make a significant capital investment in the District, and add new retail services that will benefit the residents and businesses in the local community. In these very difficult economic times, this type of confidence in the Essex market reinforces public and private reinvestment in the area.

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 dated July 6, 2010 which indicates that the site is named "Essex Gateway Center" and truly is a visual first view of

the Essex commercial district for those driving east on the Eastern Avenue Bridge over Back River. The site is also in the Essex Design Review Area and as such must submit plans and elevations for review through the Office of Planning. The Office also recommends that the design review be done before having the zoning hearing so that the design panel's comments may be incorporated into the site plan and a second zoning hearing is not necessary. The Planning Office also requires a landscape plan that shows an entry feature at the intersection of Eastern and Virginia Avenues, as well as high quality planting along Eastern Avenue. This follows from prior discussions and agreement with the Developer. In addition, the strip of property behind the existing and proposed buildings must be landscaped to provide screening from the adjacent residential uses and the residential community behind the subject property. Subject to review and approval of the landscape and screening plan, the Planning Office supports the proposed zoning requests. Comments were also received from the Department of Environmental Protection and Resource Management dated August 13, 2010 which indicates that the property must comply with the Chesapeake Bay Critical Area Regulations. The property is in an Intensely Developed Area (IDA) within the Chesapeake Bay Critical Area. The 10% pollutant reduction requirements must be addressed for any redevelopment on site.

Considering all the testimony and evidence presented, I am persuaded to grant the variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests, including the unusual shape of the property, its frontage on three public streets, its proximity to the Eastern Avenue Bridge over Back River, and its location as the visual first view of the Essex commercial district for eastbound traffic. In addition, these conditions drive the need for the parking and sign variances. The property is pinched to a degree by the layout and configuration of existing parking area and

buildings, and the desire to “recycle” most of these existing improvements for the new “Gateway Center.” Ms. Van Arsdale also notes in her letter of support that the established development pattern of older districts is different than newer ones, often with land parcels that are smaller and more narrowly configured, making it difficult to meet current zoning standards. As to the signage, again the layout and configuration of existing improvements and the “separateness” of the two distinct areas of redevelopment makes two signs necessary for this project. These are the features that render the property unique in a zoning sense.

I also find Petitioners would suffer practical difficulty and undue hardship if the variances were to be denied. Petitioners would have to completely reconfigure the proposed development and could be required to raze the existing former bingo hall in order to meet the Regulations, which would be, to say the least, impractical. Further, I find that the variance requests 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.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered, I find that Petitioners’ variance requests should be granted.

THEREFORE, IT IS ORDERED this 28<sup>th</sup> day of September, 2010 by this Deputy Zoning Commissioner that Petitioners’ Variance requests from Sections 409.6.A.2 and 450.4 Attachment 1.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit 97 parking spaces in lieu of the required 154 parking spaces; to permit 2 freestanding joint identification signs in lieu of the permitted 1 freestanding joint identification sign for an existing restaurant, proposed restaurant and proposed retail stores; and from Section 409.8.A.4 of the B.C.Z.R. to

permit a parking space with a 5 foot setback to public street right-of-way in lieu of the required 10 feet, be and are hereby **GRANTED**.

The relief granted and the findings made herein are subject to the following which are conditions precedent to the granting of relief:

1. Petitioners are advised that they may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-2-1004 and other Sections of the Baltimore County Code).
3. The property is in an Intensely Developed Area (IDA) within the Chesapeake Bay Critical Area. The 10% pollutant reduction requirements must be addressed for any redevelopment on site.
4. A landscape and screening plan, as well as architectural plans and elevation drawings, shall be submitted to the Office of Planning for review and approval prior to the issuance of any building permit.

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

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SIGNED  
THOMAS H. BOSTWICK  
Deputy Zoning Commissioner  
for Baltimore County

THB:pz