

<b>IN RE: PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
S side of West Chesapeake Avenue, 156 feet	*	OFFICE OF
W of the c/l of Bosley Avenue		
9 <sup>th</sup> Election District	*	ADMINISTRATIVE HEARINGS
5 <sup>th</sup> Councilmanic District		
<b>(303 Chesapeake Avenue)</b>	*	FOR BALTIMORE COUNTY
West Chesapeake LLC		
<i>Petitioner</i>	*	<b>Case No. 2011-0241-SPHA</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings for consideration of Petitions for Special Hearing and Variance filed by West Chesapeake, LLC, legal owner of the subject property. Petitioner requests a special hearing to permit an amendment to the order and site plan approved in Case No. 4467-X. Additionally, Petitioner requests a variance to allow a minimum distance of 1 foot from a building to a side property line in lieu of the required 25 feet and a variance to allow 74 percent of the rear yard area to be used for parking in lieu of the permitted 50 percent. The subject property and requested relief are more fully described on a redlined site plan, marked and accepted into evidence as Petitioner’s Exhibit 1.

At the requisite public hearing David H. Karceski, Esquire with Venable LLP appeared as attorney for Petitioner. Also appearing in support of the requested relief were John Bremermann and Tom Obrecht on behalf of the legal owner of the property, West Chesapeake, LLC; Jared Barnhart and Mitch Kellman with Daft McCune Walker, Inc., the professional engineering firm that prepared the site plan; and Shannon Comer with Shannon Comer Architects, Inc., the project architect. Upon receipt of their resumes, which were marked and accepted into evidence as Petitioner’s Exhibits 2, 3 and 6, Mr. Kellman was accepted as a zoning specialist with detailed

knowledge of the B.C.Z.R., Mr. Barnhart as an expert in the field of professional engineering, and Ms. Comer in the field of architecture.

Also in attendance was Gene Oaksmith, Vice President of Strategic Development for the Y of Central Maryland (or “Y”). It was explained that the subject property is improved with an office building, as shown on Petitioner’s Exhibit 1, and that the Y is the intended tenant for the office building. Mr. Oaksmith explained that, if the requested relief were granted so as to accommodate the functions of the Y, the Y would use the subject property as administrative services for its Central Maryland headquarters, which would manage the Y’s business affairs and house its offices for marketing, philanthropy, human resources, IT support and other related services. It was further explained that, from the Y’s perspective, the subject property is the ideal location for relocation of its Central Maryland headquarters, given the close proximity to the Y’s Towson Health and Wellness Facility located at 600 West Chesapeake Avenue and the recently approved Y day care facility to be operated on the adjacent property (301 West Chesapeake Avenue).

Additionally, three interested citizens attended the hearing and offered no objections to the requested relief: Richard Reinhardt, owner of 220 Bosley Avenue, which is improved with an office building and surface off-street parking; and Donald Gerding and Richard Parsons on behalf of the Greater Towson Council of Community Associations (“G.T.C.C.A.”). Further, a letter of support authored by the President for the Southland Hills Improvement Association (“S.H.I.A.”) – whose boundaries encompass the subject property – was marked and accepted into evidence as Petitioner’s Exhibit 10. The letter indicated that the S.H.I.A. Board supports the project and does not object to the requested zoning relief. Another letter of support signed by the President for the West Towson Neighborhood Association (“W.T.N.A.”) – the southern boundary of which is

immediately to the north of the subject property – was marked and accepted into evidence as Petitioner’s Exhibit 10A. With no Protestants in attendance, and, without objection, the public hearing proceeded on a proffer from Mr. Karceski.

At the outset of the hearing, Counsel for Petitioner submitted a redlined site plan, which showed minor revisions to the plan, as originally filed, including the following: (1) relocation of the dumpster from the southeastern corner of the property to the southwestern corner of the property and (2) related adjustments to the location and striping of off-street parking spaces to the rear of the existing office building. He advised that these redlined revisions were made to accommodate Mr. Reinhardt’s request to move the dumpster to the location shown on the redlined site plan.

The testimony and evidence revealed that the subject property is comprised of approximately 0.73± acres of land situated in close proximity to the southwest corner of the intersection of West Chesapeake and Bosley Avenues in Towson. The subject lot is very narrow; it is more than three times longer (323 feet ±) than it is wide (98 feet ±). The site is zoned R.O., as indicated on Petitioner’s Exhibit 1 and the aerial photograph/zoning map (Petitioner’s Exhibit 4), which also shows the much larger area of R.O. zoned land surrounding the subject property that includes numerous properties utilized for general office purposes. On the opposite side of Bosley Avenue is the western edge of the C.T. (Commercial, Town-Center Core) District of Towson. As explained by Petitioner, the site is presently improved with an office building and is “ideal” for the re-adaptive use of the existing building for use as the Y’s Central Maryland headquarters.

As shown on Petitioner’s Exhibit 1, the subject site is presently improved with a two-story office building and off-street parking spaces located in the front and rear yards, and the site is served by a single vehicular ingress and egress point onto West Chesapeake Avenue. Petitioner

provided a number of photographs (Petitioner's Exhibits 5A-H), which depict the existing conditions of the subject property. At this time, Petitioner proposes a number of improvements to accommodate the Y's use of the property, including: (1) construction of a two-story building addition onto the eastern side of the existing building; (2) restriping and reconfiguration of the existing parking spaces located in front of and behind the existing building; (3) shared vehicular access between the subject property and the adjacent property to the east also owned by Petitioner; (4) additional site landscaping; and (5) a pedestrian connection from West Chesapeake Avenue into the property.

Petitioner submitted, for illustrative purposes only, a number of exhibits to help demonstrate the types of upgrades it seeks for the site. First, Petitioner introduced preliminary color building elevations (Petitioner's Exhibit 7), which show the significant changes Petitioner desires for the existing office building. Additionally, he submitted a preliminary color landscape plan (Petitioner's Exhibit 9), which shows approximate locations for supplemental landscaping on the property, along the northern, western, and southern property lines. Finally, Petitioner offered a preliminary floor plan (Petitioner's Exhibit 8), which shows a possible interior layout for re-use of the existing building and the planned addition to the building.

It is these proposed improvements that necessitate the requested zoning relief. With regard to the special hearing, Mr. Karceski explained that Petitioner seeks approval from this Office to amend an order and site plan approved in 1959 in Case No. 4467-X. Specifically, a special exception was granted to allow the existing office building on the subject property. Because Petitioner now seeks to construct an addition onto the existing office building and make other minor changes to the site plan approved in that case, the subject special hearing relief was required. Additionally, with the special exception having been approved in 1959, Petitioner's

proposed site improvements require variances from certain setback and parking regulations in effect at that time.

The Zoning Advisory Committee (“ZAC”) comments were received by this Administrative Law Judge and are made a part of the record in this case. Comments were received from the Bureau of Development Plans Review, dated March 21, 2011, which indicated that Plans Review had reviewed Petitioner’s site plan and offered “no comments.” The comments from the Office of Planning, dated March 17, 2011, indicated that Planning “supports the Petitioner’s request” provided that (1) final architectural elevations for the building and signs are provided to the Office of Planning for review and approval prior to application for building permit, and (2) the dumpster in the rear yard is enclosed to mitigate visual impacts. Petitioner had no objection to Planning’s written requests, and I will make them conditions to this Order.

As indicated above, Richard Reinhardt, who owns an office building located at 220 Bosley Avenue, attended the hearing and indicated that he had met with Mr. Karceski prior to the hearing to discuss the requested zoning relief. Mr. Reinhardt is not opposed to the requested relief, provided certain conditions are made a part of the order, relating to the installation of a fence along the rear property line of 303 West Chesapeake Avenue and a concern that the Y of Central Maryland might lease parking spaces to the proposed Towson Swim Club for use by the swim club. Petitioner had no objection to imposition of these conditions in this matter, which are the same conditions imposed on the adjacent property in an order issued in Case No. 2011-0026-SPHXA (Petitioner’s Exhibit 11, Condition Nos. 3, 5). Additionally, based on prior conversations with Mr. Reinhardt, Petitioner agreed to relocate the dumpster for the site, as shown in red on Petitioner’s Exhibit 1.

Considering all of the testimony and evidence presented, and for the reasons outlined below, I am persuaded to grant the requested zoning relief.

### **Petition for Special Hearing**

As indicated above, a prior special exception for an office use was obtained in Case No. 4467-X. Petitioner's proposed addition to the office building and the other minor changes to the approved site plan are subject to the same special exception standard. Mr. Karceski proffered the testimony of Petitioner's expert Mr. Kellman, who opined that the changes proposed on Petitioner's Exhibit 1 satisfied all of the elements of B.C.Z.R. Section 502.1 and enumerated each. Further, consistent with the Court of Appeals' decisions in *People's Counsel for Baltimore County v. Loyola*, 406 Md. 54 (2008) and *Schultz v. Pritts*, 291 Md. 1 (1981), Mr. Kellman opined that that proposed improvements would not have any impact on the properties in the vicinity of the subject site that would be above and beyond the impacts that are inherent to an office use.

Further, I find that the illustrative building elevations demonstrate that the newly proposed improvements represent a significant upgrade for the subject property. Likewise, the illustrative landscape plan shows that the site will be well-landscaped along its property lines, thus providing an effective screen between the subject site and adjacent properties, including Mr. Reinhardt's property. Finally, the letters of support provided by W.T.N.A and S.H.I.A. provide further indication that the proposed improvements to the site will have no adverse impact on the surrounding area.

Therefore, I find that the proposed building addition and related improvements meet the criteria of B.C.Z.R. Section 502.1, including the requirement that they will not be detrimental to the health, safety, and general welfare of the locality involved.

## **Petition for Variance**

Mr. Karceski explained that two variances were requested to accommodate the re-adaptive use of the office building: (a) to allow a minimum distance of 1 foot from a building to a side property line in lieu of the required 25 feet; and (b) to allow 74 percent of the rear yard area to be used for parking in lieu of the permitted 50 percent.

Based on the testimony and evidence presented, I find special circumstances or conditions exist that are unique to the subject property. Petitioner's Exhibits 1, 4, and 5A-H help demonstrate some of these unique aspects of the property, including: (1) its narrow shape, which is more than three times longer (323 feet  $\pm$ ) than it is wide (98 feet  $\pm$ ); (2) the proposed re-adaptive use of the site's existing improvements for the proposed office use; and (3) its location within a "transitional" zoning area between Towson's C.T. District and the residential neighborhoods to the west.

Moreover, I find that, due to these unique conditions, strict enforcement of the B.C.Z.R. would cause the Petitioner to suffer a practical difficulty, because Petitioner would not be able to redevelop the site in a functional manner otherwise permitted by the regulations to accommodate the Y's Central Maryland headquarters without the requested variance. Finally, I find that the relief requested will not result in any adverse impact on the surrounding area; rather, the proposed improvements will result in a significant upgrade to the subject property and the surrounding locale.

Thus, the variance requested meets the requirements of Section 307 of the B.C.Z.R., as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

Pursuant to the advertisement, posting of the property and public hearing held, and after considering the testimony and evidence offered, I find that Petitioner's request for special hearing and variances should be granted.

THEREFORE, IT IS ORDERED, by the Administrative Law Judge for Baltimore County this 13<sup>th</sup> day of April, 2011 that the Petition for Special Hearing to amend the order and site plan approved in Case No. 4467-X be and is hereby GRANTED;

IT IS FURTHER ORDERED that the Petition for Variance to allow a minimum distance of 1 foot from a building to a side property line in lieu of the required 25 feet; and to allow 74 percent of the rear yard area to be used for parking in lieu of the permitted 50 percent, be and they are hereby GRANTED.

The relief granted herein is subject to the following conditions:

1. Petitioner is advised that it 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 its 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. Petitioner shall install a new fence along the rear property line of the subject property and in the approximate location shown and indicated in red and labeled "FENCE LOCATION" on Petitioner's Exhibit 8 in Case No. 2011-026-SPHXA, and will obtain all necessary approvals and permits from Baltimore County. Installation of the fence shall be at Petitioner's expense.
3. For the term of its lease, the Y shall install and maintain a sign on the subject property and a sign on the adjacent property, known as 301 West Chesapeake Avenue, with the following notice regarding on-site parking spaces: "This parking is for the exclusive use of Y employees, Y members and Y guests while using the Y facilities located at 301 West Chesapeake Avenue, 303 West Chesapeake Avenue and 600 West Chesapeake Avenue only."
4. Prior to the application for a building permit, Petitioner shall provide final architectural elevations for the building and signage to the Office of Planning for review and approval.

5. The dumpster serving the use on the subject property shall be relocated as indicated on the red line plat submitted at the time of hearing and shall be enclosed.
6. Petitioner shall provide a plan showing the location and details of all proposed landscaping, and shall submit such plan to Avery Harden, Baltimore County Landscape Architect, subject to his review and approval.
7. When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

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

Signed \_\_\_\_\_  
LAWRENCE M. STAHL  
Managing Administrative Law Judge  
for Baltimore County

LMS:pz