

<b>IN RE: PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
East Side of Falls Road; 98' N of the	*	OFFICE OF
c/l of Hillside Avenue		
9 <sup>th</sup> Election District	*	ADMINISTRATIVE HEARINGS
2 <sup>nd</sup> Councilmanic District		
<b>(10501 Falls Road)</b>	*	FOR BALTIMORE COUNTY
John Hatfield, Jr., <i>Legal Owner</i>	*	
TVI Properties, LLC, <i>Contract Purchaser</i>		
Petitioners	*	<b>CASE NO. 2011-0267-SPHA</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Special Hearing and Variance filed by the contract purchaser of the property, TVI Properties, LLC, by and through its attorney, Robert A. Hoffman, Esquire, with Venable LLP. Petitioner requests a special hearing to amend the restrictions imposed in Case No. 04-006-SPHA, and to amend the approved site plan to adjust the associated restrictions and hours of operation. In addition, Petitioner requests a variance from Section 229.6 of the Baltimore County Zoning Regulations (“BCZR”) to permit a building in the BLR (Business Local Restricted) zone to be set back 0 feet from the property line of a residentially zoned property. The subject site and the requested relief are more particularly described on the redlined site plan accepted into evidence and marked as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the petitions were Robert A. Hoffman, Esquire and Kedrick N. Whitmore, Esquire, with Venable LLP, attorneys for the Petitioner; Theodore W. Bauer, Managing Member of the Petitioner; Bruce E. Doak, with Gerhold Cross & Etzel, the engineer who prepared the redlined site plan; and Peter W. Ratcliffe, with Peter W. Ratcliffe Architects, P.A., Petitioner’s architect. Lawrence E. Schmidt, Esquire, of Smith, Gildea & Schmidt, LLC, representative of the legal owners of the property, attended as an

observer. Peter Fenwick, President of the Valleys Planning Council (“VPC”) also attended as an observer on behalf of the VPC, which was not in opposition to the requested relief.

Testimony and evidence revealed that the subject property is an irregular shaped parcel of approximately 1.66 acres, located on the east side of Falls Road, north of Hillside Road in the Lutherville-Timonium area of Baltimore County. The property is split-zoned BLR and DR1 (Density, Residential) and is improved by a two-story restaurant known as the Valley Inn, along with associated surface parking.

Petitioner plans to purchase and revitalize the Valley Inn, operating it as a first-class dining establishment that will provide a benefit to the surrounding area. To achieve this, Petitioner plans to rehabilitate the restaurant and add a 2-story addition to the rear of the building. Photographs accepted into evidence as Petitioner’s Exhibit 2 depict the poor condition of the property and the need for Petitioner’s planned renovations.

Petitioner’s attorney proceeded to explain the history of the property. During Baltimore County’s 2000 Comprehensive Zoning Map Process (“CZMP”), the County Council rezoned to BLR both the footprint of the restaurant and an area to the south of the restaurant that was planned for a building addition. At the same time, the legal owners entered into a Restrictive Covenant Agreement with the VPC (“2000 RCA”), which allowed for the planned building addition and imposed a number of restrictions on the use of the property. The legal owners and the VPC stated that they are attempting to negotiate an amended version of the 2000 RCA, to accommodate the current plans for the restaurant.

The legal owners subsequently applied for a special hearing and variance in connection with the operation of the restaurant, both of which were granted by the Zoning Commissioner in Case No. 04-006-SPHA. A copy of the order in this case was accepted into evidence as

Petitioner's Exhibit 4. A number of restrictions, including the terms of the 2000 RCA, were incorporated into the order and approved site plan ("2004 Site Plan").

During the due diligence period prior to Petitioner's purchase of the restaurant, it was discovered that the actual location of the zone lines and property lines on the property did not match what was depicted in the CZMP, the 2000 RCA, and the 2004 Site Plan. The BLR area depicted on the official zoning maps included neither the entire footprint of the restaurant building nor the area of the proposed building addition. Beyond this, the neighboring property to the south, which is zoned DR1, was found to be much closer to the restaurant building than was originally believed, overlapping a portion of the area planned for the building addition.

The legal owners filed a petition for map correction with the Baltimore County Board of Appeals ("Board") to have the zoning corrected. The Board granted the petition through its order dated June 3, 2011, rezoning the property to BLR consistent with the zone lines shown on Petitioner's Exhibit 1 in this case.

Petitioner now seeks a special hearing to amend the 2004 Site Plan as shown on Petitioner's Exhibit 1. This redlined plan shows the correct location of zone and property lines, reflecting the recent zoning map correction, and amends certain notes on the plan, including revisions to language pertaining to the hours of operation of the restaurant and the insertion of language indicating that the 2000 RCA is "to be amended." Petitioner also requests that any zoning relief issued by way of this order be subject to the 2000 RCA, as may be amended by a document recorded in the Baltimore County Land Records.

Additionally, Petitioner has requested a variance to allow a 0 foot setback from the residential property line to the south. Petitioner explained that, based on the proximity of this

neighboring property line to the restaurant, the variance is necessary to complete the building addition.

After considering the testimony and evidence presented, I am persuaded to grant the petition for special hearing. The 2004 Site Plan and the restrictions in Case No. 04-006-SPHA must be amended in order to accurately reflect the current condition of the property and the most current agreement between the legal owners and the VPC.

With regard to the variance petition, Petitioner has met its burden of proof. Clearly, the property is unique by virtue of the recently discovered property line encroaching from the south, which was not reflected in the CZMP, the 2000 RCA or Case No. 04-006-SPHA. This unique circumstance would cause practical difficulty for Petitioner if the BCZR were strictly enforced, because Petitioner would be unable to complete the building addition that has been contemplated for years, undermining its goal of rehabilitating the restaurant. The property south of the restaurant is vacant, so that no adverse impact will result from grant of the setback variance. Based on these factors, I also find that the variance is in harmony with the spirit and intent of the BCZR.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 21 day of July, 2011 that Petitioner's request for a special hearing to amend the restrictions imposed in Case No. 04-006-SPHA, and to amend the approved site plan to adjust the associated restrictions and hours of operation be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's request for a variance from Section 229.6 of the Baltimore County Zoning Regulations ("BCZR") to permit a building in the BLR (Business Local Restricted) zone to be set back 0 feet from the property line of a residentially zoned property be and is hereby GRANTED.

The granting of the above relief shall be subject, however, to the following conditions:

1. Petitioner shall comply with the terms and conditions of the 2000 RCA, as may be amended from time-to-time by a subsequent document recorded in the Baltimore County Land Records;
2. Any future modifications to the exterior of the restaurant building must be reviewed and approved by the Baltimore County Landmarks Preservation Commission; and
3. Petitioner may apply for 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 such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

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

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Signed  
TIMOTHY M. KOTROCO  
Administrative Law Judge  
for Baltimore County

TMK/pz