

<b>IN RE: PETITIONS FOR SPECIAL</b>	*	BEFORE THE
<b>EXCEPTION AND VARIANCE</b>	*	OFFICE OF
W side of York Road, 285 feet S from	*	ADMINISTRATIVE HEARINGS
the c/l of Ridgley Road	*	FOR BALTIMORE COUNTY
8 <sup>th</sup> Election District	*	
3 <sup>rd</sup> Councilmanic District	*	
<b>(1734 York Road)</b>	*	
Windsor Mercy Holdings II LLC	*	<b>Case No. 2011-0221-XA</b>
<i>Legal Owner</i>	*	

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before the Office of Administrative Hearings for consideration of Petitions for Special Exception and Variance filed by William N. Apollony, President of Windsor Mercy Holdings II, LLC, the legal property owner. The Special Exception is to permit a state-licensed medical clinic (freestanding ambulatory care facility) pursuant to Section 4C-102 of the Baltimore County Zoning Regulations (“B.C.Z.R.”). The Variance request is as follows:

- From Section 4C-102.A.2 of the B.C.Z.R. to allow a state-licensed medical clinic (freestanding ambulatory care facility) to be a minimum of 144 feet from a residentially zoned property line in lieu of the required 750 feet; and
- From Section 232.3.B of the B.C.Z.R. to allow the rear yard for a commercial building where the rear lot line abuts a lot in a residence zone to be a minimum of 19 feet in lieu of the required 20 feet.

The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the Special Exception and Variance requests were Petitioner William N. Apollony, President of Windsor Mercy Holdings II, LLC, the legal property owner, Leigh T. Howe with Windsor Health Care, Ryan Potter, Esquire with Gallagher

Evelius & Jones, LLP, Robert Edwards and Helen Leek with Mercy Medical Center, George E. Love, M.D. with Mercy Medical Center, Robert Mulreaney, and Matthew Allen with Bohler Engineering, the professional engineer who prepared the site plan. Also attending in support of the requests was David H. Karceksi, Esquire and Kedrick Whitmore, Esquire of Venable LLP, attorney for the Petitioner. Also, Eric Rockel, President of the Timonium Community Council, Inc., was in attendance.

The Petitioner and affiliated entities propose to open on the subject property a state of the art medical facility with various specialties and treatment modalities under one roof. The facility is proposed for 1734 York Road (zoned BL-CCC), part of the Ridgely Plaza Shopping Center, and would occupy the space previously used by a Giant food store which closed some time ago.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Most County agencies offered no comment, although the Office of Planning on February 11, 2011, indicated that after a comprehensive review of the submittal and a conference with the Petitioner, it supports the request and believed the medical facility would be an enhancement to this section of the York Road corridor.

Turning first to the requested special exception and variance under B.C.Z.R. Section 4C-102, I am persuaded to grant the relief. The undersigned is intimately familiar with Bill 39-02 (now codified at B.C.Z.R. 4C-101 et. seq.) and its enhanced 750 foot setback and special exception requirements. The Baltimore County Council enacted the law in response to a rash of community complaints concerning certain State licensed medical clinics which opened immediately adjacent to residential areas. In fact, Baltimore County litigated for over seven years in defending a challenge to the law brought by a drug treatment clinic in Pikesville. (See Helping Hand LLC v.

Baltimore County). Bill 39-02 was ultimately upheld by the Federal court, but none of the concerns which animated that litigation are found in the present case.

Indeed, the medical clinic proposed in this case will be run by Mercy Hospital affiliated entities, which are recognized leaders in health care in the Maryland area. The facility will contain a vast array of physicians and will offer “one stop shopping” for medical services to area residents. The facility will contain “major medical equipment” (such as a CT scanner) and as such qualifies as a “state licensed medical clinic” under Section 19-3B-101 of the State Health-General Code. Hence the need for the special exception – since the facility will be located in a business zone – and the 750 foot setback.

Of course, special exception uses are presumptively valid, People’s Counsel v. Loyola College, 406 Md 54, 77 n. 23 (2008), and no evidence was offered here to rebut the presumption. Indeed, only one community member appeared at the hearing – Eric Rockel – and he is in fact the President of the Timonium Community Council. Mr. Rockel testified that the neighboring York Manor community offered no objection and that the President of the Lutherville Community Association initially had a concern about the project, but that the Petitioner had addressed that concern, meaning that group was also supportive of the project. Finally, Mr. Rockel testified that the facility will be a much-needed boost for a moribund shopping center that has been plagued with many vacancies.

Simply put, the project would not pose any threat to the health or safety of area residents, nor would it overburden roads or public infrastructure. The Planning Office and Petitioner’s engineer – Matthew Allen – so opined, and the State Highway Administration, in a revised comment marked as Petitioner’s Exhibit 4, advised the project will not cause congestion in area roads. As is apparent from the architectural drawings submitted at the hearing (Petitioner’s

Exhibit 7), the Mercy facility will be an attractive and positive addition to this area of the County. Having satisfied the factors set forth in B.C.Z.R Section 502 and the test applied in cases such as Schultz v. Pritts, 291 Md 1 (1981), I find the special exception under B.C.Z.R. 4C-102 for this freestanding ambulatory care facility should be granted.

That provision of the zoning regulations also imposes a 750 foot setback requirement (from a residentially zoned line) and I also find that Petitioner's variance request should be granted to allow this facility to be located 130 feet from a residentially zoned line. Mr. Allen testified – via proffer – that the property in question is uniquely shaped with “jagged edges.” Mr. Allen testified the shopping center was originally approved in the 1970s (as shown on the 1972 Plan marked as Petitioner's Exhibit 5), and that Mercy was proposing a unique, readaptive use from the food store which originally occupied the site. Mr. Allen also opined that Petitioner would experience a hardship or practical difficulty if variance relief were not granted, given that it could not satisfy the 750 foot setback requirement anywhere on the site, and could therefore not open the facility.

With respect to the variance sought under Section 232.3.B of the B.C.Z.R., the above comments concerning the uniqueness of the site are likewise applicable. The variance seeks a rear yard setback of 19 feet instead of the required 20 feet, and Petitioner's engineer testified that in reality the discrepancy will be on the order of several inches. Finally, the rear lot in question faces athletic fields owned by the School Board, and though that property is zoned residential (DR 3.5) and triggers B.C.Z.R. Section 232.3.B, the concerns addressed by that regulation are not really implicated here since a dwelling is not located on the parcel.

I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests, that strict compliance with the Zoning Regulations

for Baltimore County would result in practical difficulty or unreasonable hardship, and that the variance request 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 these petitions held, and after considering the testimony and evidence offered, I find that Petitioner's Special Exception and Variance requests should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 21<sup>st</sup> day of March, 2011, that Petitioner's request for Special Exception to permit a state-licensed medical clinic (freestanding ambulatory care facility) pursuant to Section 4C-102 of the Baltimore County Zoning Regulations ("B.C.Z.R.") be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's Variance requests as follows:

- From Section 4C-102.A.2 of the B.C.Z.R. to allow a state-licensed medical clinic (freestanding ambulatory care facility) to be a minimum of 144 feet from a residentially zoned property line in lieu of the required 750 feet; and
- From Section 232.3.B of the B.C.Z.R. to allow the rear yard for a commercial building where the rear lot line abuts a lot in a residence zone to be a minimum of 19 feet in lieu of the required 20 feet

be and are hereby GRANTED.

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

1. Petitioner may apply for any permits required and be granted same upon receipt this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from 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.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB/pz