

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
N side of Baltimore National Pike, NW		
Corner of Baltimore National Pike	*	OFFICE OF
and Dunwood Drive		
1 <sup>st</sup> Election District	*	ADMINISTRATIVE HEARINGS
1 <sup>st</sup> Council District		
<b>(6600 Baltimore National Pike)</b>	*	FOR
1 Mile West, LLLP, c/o The	*	BALTIMORE COUNTY
Fedder Company, <i>Legal Owners</i>		
Sungwoon Catonsville, LLC,	*	
<i>Contract Purchaser/Lessee</i>		
Petitioners	*	<b>CASE NO. 2012-0243-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of a Petition for Variance filed by David H. Karceski, Esquire with Venable, LLP, on behalf of the legal owner, 1 Mile West, LLLP, c/o The Fedder Company, and the contract purchaser/lessee, Sungwoon Catonsville, LLC, (“Petitioners”). The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.), Section 409.6.A.2, to allow 497 off-street parking spaces in lieu of the required 637. The subject property and requested relief is more fully depicted on the redlined site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the variance request were Mike Coughlin and Bill Monk with Morris & Ritchie Associates, Inc., the consulting firm that prepared the site plan, Nathan Raider and Robert Pollokoff with Fedder Real Estate and Development Management, and Sang Lee with Lotte Plaza. David H. Karceski, Esquire and Christopher Mudd, Esquire attended and represented Petitioners. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R. There were no Protestants or other interested

persons in attendance.

Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. A ZAC comment was received from the Department of Planning on June 11, 2012, which states as follows:

The Department of Planning has reviewed the petitioner's request and accompanying site plan. This department offers the following comments:

On May 8, 1991, the Deputy Zoning Commissioner granted a parking variance for this property with the condition that the petitioner provide planting and upgrade landscaping along the front of the property around the signs and in the interior of the parking lot as determined appropriate by the Office of Planning (now Department of Planning) (see Case No. 91-252-A).

In lieu of providing interior parking lot landscaping as required in the above referenced case, the petitioner should add shade trees consistent with the landscape plan prepared by MRA furnished to the Department of Planning dated 5/29/2012. It appears that the proposed landscaping provides a significant upgrade to the visual aesthetic of the site and an environmental benefit. Consult with Jean Tansey, Baltimore County Landscape Architect to determine the type, number, and specific location of shade trees to be installed.

The Department of Planning recognizes that the petitioner has agreed to improve pedestrian access to the shopping center from the adjoining residential neighborhood by adding a sidewalk along the west side of Nuwood Drive from Dlong Road to the vehicular entrance opposite Powers Lane. Also, add a walkway from the proposed sidewalk into the site through the grass-covered area on the north side of the vehicular entrance.

In light of the aforementioned, the Department of Planning supports the petitioner's variance request.

Counsel for Petitioners indicated they met with the Department of Planning and have satisfied the concerns identified by that agency. The redlined plan depicts the proposed sidewalk along Norwood Drive, and the landscape plan marked as Exhibit 3 shows the plantings to be added to the site.

Testimony and evidence revealed that the subject property is 10.1 acres and zoned BR (Business, Roadside). The site is improved with a strip shopping center that has existed for many years in the Catonsville area. The new owners acquired the property in 2001, and have made

significant improvements to what was a moribund center, as seen on the photographs marked as Exhibits 5 and 6A-D. The need for the variance relief arises because Petitioners propose to operate a grocery store (Lotte Plaza, Exhibit 7) in the former tenant space occupied by Toys-R-Us.

Based upon the testimony and evidence presented, I am persuaded to grant the request for variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Indeed, this center was constructed in 1960, and is of irregular dimensions. Petitioners need to contend with existing site conditions, and Mr. Coughlin (who was accepted as an expert in land use matters; his resume was marked as Exhibit 2) testified via proffer that more than sufficient parking exists on site, for both peak and off peak uses. In addition, the landscaping to be provided along Baltimore National Pike is wider/deeper than required by County regulation, which contributes to the need for parking variance relief. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioners. In this regard, Petitioners testified they own no additional property to accommodate off-site parking, and thus Petitioners would be unable to operate their grocery store, a permitted use in the zone.

Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People's Counsel*, 407 Md. 53, 80 (2008).

Petitioners have met this test.

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and

general welfare. This is amply demonstrated by the lack of community and County agency opposition.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and after considering the testimony and evidence offered by the Petitioners, I find that Petitioners' variance request should be granted.

THEREFORE, IT IS ORDERED, this 14 day of June, 2012, by this Administrative Law Judge, that Petitioners' Variance request from the Baltimore County Zoning Regulations (B.C.Z.R.), Section 409.6.A.2, to allow 497 off-street parking spaces in lieu of the required 637, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. The Petitioners may apply for a building permit and may be granted same upon receipt of this Order. However the Petitioners are hereby made aware that proceeding at this time is at his own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason this Order is reversed, the Petitioner will be required to return and be responsible for returning said property to its original condition.
2. Petitioners must comply with the ZAC comments of the Department of Planning, dated June 7, 2012, a copy of which is attached hereto and made a part hereof.

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