

**IN RE: PETITIONS FOR SPECIAL
EXCEPTION AND VARIANCE**

E side of Beaver Court, N/E of
Beaver Dam Road
8th Election District
3rd Councilmanic District
(One Beaver Court)

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY

One Beaver Court, LLC
Legal Owner

* **Case No. 2012-0020-XA**

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Special Exception and a Petition for Variance filed by the Petitioner, Frankel Properties, LLC, along with One Beaver Court, LLC, as legal owner of the subject property, by and through Christopher D. Mudd, Esquire, with Venable LLP. Petitioner requests a special exception for a service garage in the ML-IM zone, pursuant to Section 253.2.B.3 of the Baltimore County Zoning Regulations (“BCZR” or “Zoning Regulations”) and a variance from BCZR Sections 255.1 and 238.2 to permit a setback of 29 feet, in lieu of the required 30 feet. 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 petition were Christopher D. Mudd, Esquire, attorney for the Petitioner; Rich Giroux, on behalf of the Petitioner; Robert Capalongo with C.N.A. Engineers, Inc., the registered landscape architect who prepared the site plan; and Mickey Cornelius, a traffic engineer and Senior Vice President of The Traffic Group, Inc. Also in attendance were David Rhodes, a representative of the entity owner of the subject property, and Robert Hoffman also with Venable LLP. There were no protestants in attendance.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case, and I note that there were no negative comments.

Testimony and evidence revealed that the subject property is a 6.227± acre parcel, located on the east side of Beaver Court, north of Warren Road, in the Cockeysville area of Baltimore County. The property is zoned ML-IM (Manufacturing, Light – Industrial, Major), and improved with a single story building housing a warehouse use and a party rental business. The property has a unique wedge shape that is dictated by the fact that it is immediately adjacent to railroad rights of way to the south and east, Beaver Court to the west, and a private pipe-stem access road serving a neighboring property to the north.

The Petitioner proposes to reconfigure the portion of the building dedicated to the party rental by making that use smaller (from 52,952± sq. ft. to 32,924± sq. ft.) and installing a service garage in the remaining space (20,080± sq. ft.). The site plan shows that the service garage use will be located in a secluded area of the subject property, tucked towards the back of the property, in an area surrounded by existing mature vegetation. A Site Plan and Photo Plan and photographs submitted as Petitioner's Exhibits 5 and 6A through 6F, respectively, depict this private and secluded area surrounding the parking lot where vehicles awaiting repair and pick-up will be stored.

The service garage use is permitted by special exception in the ML-IM zone, which caused the Petitioner to file the petition at issue in this case. Additionally, the testimony established that, when preparing the site plan for the special exception petition, it was discovered that the existing building is situated 29.5 feet from the side property line, where 30 feet is required. Therefore, the Petitioner also filed a petition for a variance.

Regarding the special exception request, the evidence and testimony demonstrated that the proposed service garage use at the subject location would not generate any adverse effects above and beyond those inherently associated with such a use irrespective of its location within the ML-IM zone. Petitioner's expert witnesses, Messrs. Capalongo and Cornelius, addressed the provisions of Section 502.1 of the Zoning Regulations. Specifically, they opined that the service garage use would not be detrimental to the health, safety or general welfare of the locality involved, because the use is located on a secluded portion of the subject property surrounded by existing mature vegetation and immediately adjacent to a rail line; the use would not tend to create congestion in roads, streets or alleys given the limited number of trips generated by the use, the adequate site circulation, and the fact that the property is not within a failing traffic shed; the use would not create a potential hazard from fire, panic, or other danger, because it has adequate buffers to adjacent uses and good site access and circulation; it would not tend to overcrowd the land and cause undue concentration of population, because of the small footprint of the use, the adequate buffers to adjacent uses, and the limited number of employees and customers who will be on the property; it would not interfere with adequate provisions for schools, parks, water, sewage, transportation, or other public requirements, because it will use very little public water or sewer capacity and have no impact on the other public services; the use would not interfere with adequate light and air due to the small footprint of the one story building and the fact that it is primarily surrounded by mature vegetation, roadways, and open space; the use would not be inconsistent with the purpose of the property's zoning classification nor in any other way inconsistent with the spirit and intent of the Zoning Regulations, because the use fits well within the industrial zone and will serve the uses in the surrounding industrial area; and it would not be inconsistent with the impermeable surface and vegetative retention provisions of the Zoning

Regulations, because there will be no changes to the existing site conditions, which is primarily impervious surface with mature vegetation along the site's borders.

I agree with the Petitioner's witnesses that the requested special exception use is appropriate for the proposed location. Their uncontroverted testimony clearly establishes that the petition for special exception meets the requirements of case law and specifically of Section 502.1 of the Zoning Regulations.

In addition to the 502.1 standards, Section 253.2.B.3 also requires a finding that the service garage use will serve primarily the industrial uses and related activities in the surrounding industrial area. Petitioner's witness Mr. Giroux explained that, in his experience as Vice President of Frankel Automotive Group, most service garage customers tend to use a garage that is closest to their workplace. Petitioner presented as Exhibit 8 an aerial photograph showing that the surrounding industrial area is a large area along the I-83 corridor, extending from Shawan Road to Timonium Road, which is home to many employers. The witnesses asserted that the numerous employees in this industrial area will be the primary users of the service garage. In fact, Petitioner presented as Exhibit 9 a map contained in Master Plan 2020, which shows that this industrial area is designated as one of the largest "employment centers" in the County. In light of this evidence and testimony, I agree that the service garage use will serve primarily the numerous employees in the surrounding industrial area.

Regarding the petition for variance, upon review of the testimony and evidence, I am likewise persuaded to grant the requested relief. Specifically, I find special circumstances or conditions exist that are unique to the subject property. As described above, the property is uniquely shaped, due to its proximity to existing railroad rights of way and private and public roadways. The shape creates pinch points at the eastern and western boundaries that caused

difficulty in designing the site to accommodate the proposed building and all of the parking required to serve the uses, while at the same time respecting the setbacks. Recognizing that the building has been located on the property for years and the setback deficiency has only now been discovered, if I were to strictly apply the Zoning Regulations to the property, the Petitioner would be required to demolish a portion of the building to accommodate the required setbacks. This is not a plausible outcome for the Petitioner, who was not responsible for the apparent mistake in building construction.

There will be no adverse impacts caused by the grant of the variance. There is an existing light rail track located immediately adjacent to the side property line from which the variance relief is requested. Having a building located one foot closer to that property line will not burden anyone. Finally, I find that the variance request can be granted in harmony with the spirit and intent of the Zoning Regulations, and in such a manner as to grant relief without injury to the public health, safety, and general welfare. Setback regulations are designed to protect adjacent properties from having buildings situated too close to the property lines; here, a building located one foot closer to the property line will not cause any impact to the adjacent property improved with a light rail line.

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

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 Petitioner's special exception and variance requests herein should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 1st day of September, 2011, by this Administrative Law Judge that Petitioner's request for

Special Exception to permit a service garage in the ML-IM zone, pursuant to Section 253.2.B.3 of the Zoning Regulations, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the request for Variance from Sections 255.1 and 238.2 of the Zoning Regulations to permit a setback of 29 feet, in lieu of the required 30 feet, be and it is hereby GRANTED.

The relief granted is subject to the following condition:

1. Petitioner may apply for 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 appeal period from the date of this Order has expired. If an appeal is filed and 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.

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

LMS/pz