

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(1809 and 1811 Rolling Road)</b>		
1 <sup>st</sup> Election District	*	OF ADMINISTRATIVE
1 <sup>st</sup> Councilman District		
Security Center, LLC, <i>Legal Owner</i>	*	HEARINGS FOR
Weis Market, Inc.		
<i>Lessee</i>	*	BALTIMORE COUNTY
Petitioners		
	*	<b>CASE NO. 2014-0173-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Caroline L. Hecker, Esquire on behalf of Security Center, LLC, legal owner and Weis Markets, Inc, lessee (“Petitioners”). The Petitioners are requesting variance relief from Sections 409.6.A.2 and 405.4.A.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.), as follows: (1) to permit 377 parking spaces for the shopping center in lieu of the required 426 parking spaces; and (2) to permit a landscape transition area of 1.4 ft. in lieu of the required 10 ft. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 3.

Appearing at the public hearing in support of the requests was Ron Klima, Jack O’Hara, Tim Snyder and Michael Gesell from Bohler Engineering, the firm that prepared the site plan. Caroline L. Hecker, Esquire from Rosenberg, Martin & Greenberg, LLP appeared and represented the Petitioners. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. There were no Protestants in attendance and the file does not contain any letters of opposition.

Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) dated April 11, 2014, and the Bureau of Development Plans Review (DPR) dated

March 20, 2014. The DOP opposes the variances, while the DPR does not oppose either request, provided that the existing vegetation and trees planted in the buffer strip remain on site. This issue will be discussed at greater length below.

Testimony and evidence revealed that the subject property is approximately  $7.11 \pm$  acres and is zoned BM-CT and BL. The lessee operates a Weis grocery store on the property, and would like to construct a small fuel service station (an investment of over \$950,000) to accommodate its grocery customers. To do so requires variance relief.

The first variance pertains to the required number of parking spaces on site. Petitioners submitted a study and report (Ex. No. 6) showing that at their busiest time (Sunday afternoon) less than 70 vehicles occupied the parking lot (which leaves available over 300 open spaces).

The variance relating to the 10' landscape buffer requirement is somewhat more complex. Petitioners noted that there currently exists on site a 10' vegetative buffer, as required by the BCZR. But over 8 feet of that strip is in fact situated on State-owned property bordering Security Boulevard. So in reality, the variance request to approve a 1.4' landscape buffer in lieu of the required 10' is merely seeking to legitimize long-existing (i.e., over 20 years) site conditions, in recognition of the fact that 8.6' of the strip is on State land. As noted by the DOP, the future of that right of way strip along Security Boulevard is in doubt, given the State's plans for the "Red Line" Route (shown on the plan marked as Ex. No. 7), which of course may never materialize.

Mr. Gesell, P.E., who was accepted as an expert, testified via proffer that it would not be possible to shift the landscape buffer 10 feet onto Petitioners' property, since Baltimore County has a recorded utility easement in that area--as shown on the site plan--that would prevent the planting of trees and other vegetation. As such, Petitioners would need to construct the strip at least 20 feet onto their property, which would result in the loss of additional parking spaces and

could create a “bottleneck” impeding the flow of traffic between the proposed fuel service station and the north corner of the grocery store building.

In these circumstances, I am inclined to agree with Mr. Gesell, and do not believe it would make sense (at least at this time) to relocate the buffer strip. If and when the State acts to construct the Red Line, at which time it may also take through condemnation additional portions of Petitioners’ property bordering Security Boulevard, the landscape buffer issue should be revisited, and that contingency will be addressed in the Order which follows.

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. As shown on the plan, the property is irregularly shaped, and it is therefore unique.

If the B.C.Z.R. were strictly interpreted, the Petitioners would suffer a practical difficulty, given they would be unable to construct the fuel service station. 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 demonstrated by the lack of community opposition, and the testimony of Petitioners’ engineer, who opined that the proposal satisfied all requirements in the B.C.Z.R. and would not be detrimental to the community’s welfare.

The DOP’s ZAC comment also listed three additional concerns regarding the plan (i.e., signage, a crosswalk and stacking spaces at the gas pumps). The plans were revised (redlined) and now reveal that all three of these comments have been addressed. Exhibit Nos. 8-10

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the variance relief requested shall be granted.

THEREFORE, IT IS ORDERED, this 17<sup>th</sup> day of April, 2014, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Sections 409.6.A.2 and 405.4.A.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: (1) to permit 377 parking spaces for the Shopping Center in lieu of the required 426 parking spaces; and (2) to permit a landscape transition area of 1.4 ft. in lieu of the required 10 ft., be and is hereby GRANTED.

IT IS FURTHER ORDERED that if the existing landscape buffer shown on the photographs and rendered site plan (Exhibit Nos. 1D, 1E, & 12) is removed due to the State of Maryland's Red Line project, the Petitioners shall at that time be required to relocate the landscape transition area buffer in compliance with the BCZR or obtain zoning relief approving a relaxation or modification of the requirements set forth in the BCZR.

The relief granted herein shall be subject to the following:

- Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners 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:sln