

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(1920 York Road)		
8th <sup>th</sup> Election District	*	OF ADMINISTRATIVE
3rd Council District		
Kilmarnock Associates Limited Partnership	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2020-0080-A</b>

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**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Kilmarnock Associates, Limited Partnership, legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief from § 409.6.A.2 of the Baltimore County Zoning Regulations (“BCZR”) to permit 376 parking spaces in lieu of the required 431, and for such other and further relief as the nature of this case may require. A site plan was marked as Petitioner’s Exhibit 2 and a redlined site plan was admitted as Petitioner’s Exhibit 2A.<sup>1</sup>

Due to the COVID-19 pandemic, a WebEx hearing was conducted remotely by computer and/or phone participation. Bryan Eberle, appeared in support of the petition on behalf of the owner, Kilmarnock Associates. Michael Pieranunzi, the engineer who prepared the site plan was also in attendance. Based on his credentials and experience he was accepted as an expert in land

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<sup>1</sup> The redlined plan adds notes detailing the zoning history of the site, as well as pedestrian crosswalks at the rear of the building that were added in response to discussions between the Petitioner and the Department of Planning. Mr. Mudd explained that at the request of DOP the building will also be retrofitted to provide for an access door at the rear. He explained, however, that it would not be feasible to place a sidewalk along the north side of the building, as DOP suggested, because there is an existing fire suppression structure on that side of the building that would bisect the sidewalk and create more of a pedestrian hazard.

development, engineering, and the BCZR. Christopher D. Mudd, Esq. appeared and represented the Petitioner. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. A Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”). They noted that the building’s architecture and landscaping are consistent with the Hunt Valley Timonium Master Plan but expressed concern about pedestrian access issues.

The site is approximately 5.9 acres in size and zoned ML-IM, BL, BM, and BLR. Mr. Mudd explained that the site in question was previously occupied by a Sears Outlet store and an Office Depot store both within a single one story building on York Road in Timonium. The Sears store was recently taken over by a retailer with a very similar business model in that they sell “scratch and dent” appliances as well as furniture. The Petitioner in this case has entered into a lease with Crunch fitness, which intends to retrofit the Office Depot space and operate a fitness center there. The change of use from office supply store to fitness club generates the need for the parking variance.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

As Mr. Mudd explained, the site in question is unique in several ways. It was first developed as a UPS distribution center. The building on the site was constructed very close to York Road in order to accommodate truck loading docks on the side and rear of building. It was subsequently used by Von Paris Moving Company. Mr. Mudd noted that at the time these uses

were similar to other light industrial uses that still exist along Aylesbury Road to the west of this site. Subsequently the Obrecht family retrofitted the original building in order to create the current retail structure. In doing so they essentially removed the entire half of the building closest to York Road in order to create the requisite retail parking lots. Mr. Mudd explained that if this site were being developed today the entire building would be sited further back from York Road in order to increase parking capacity even further. As it is, there are still truck loading docks at the rear of the building that occupy substantial square footage that could otherwise be devoted to parking. These unique aspects of the site therefore generate the need for the variance relief.

As also explained at the hearing, if this variance relief is not granted the Petitioner will suffer both practical difficulty and hardship because it would be impossible to place the required number of parking spaces on this site. Mr. Mudd proffered that his engineer would testify that the reduced number of spaces on the proposed plan (376 spaces in lieu of 431) are still more than adequate for the parking needs at this site. First, the American Design store and its predecessor Sears generate substantially less traffic than the typical retail store. Second, the peak demand times for parking at fitness clubs is early morning and late afternoon/evening, which tends not to conflict with other retail uses. Mr. Mudd submitted as Petitioner's Exhibit 6 a spreadsheet showing club usage at a similarly sized Crunch Fitness club. This Exhibit demonstrates that even at peak hours there will be nowhere near 376 parking spaces needed to accommodate all members.

I find that based on the testimony and evidence presented that the Petitioner is entitled to the requested variance relief. I further find that the relief can be granted within the spirit and intent of the BCZR and without causing harm to the public health, safety, or welfare.

THEREFORE, IT IS ORDERED, this **21st day of August, 2020**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance from Baltimore County Zoning

Regulations pursuant to § 409.6.A.2 of the Baltimore County Zoning Regulations (“BCZR”) to permit 376 parking spaces in lieu of the required 431, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at his own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.

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

Signed \_\_\_\_\_  
PAUL M. MAYHEW  
Managing Administrative Law Judge  
for Baltimore County

PMM/dlm