

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
<b>(6400 &amp; 6402 Falls Road)</b>		
3 <sup>rd</sup> Election District	*	OFFICE OF ADMINISTRATIVE
2nd Council District		
Maddiemack, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
Northpoint Development, LLC	*	BALTIMORE COUNTY
<i>Contract Purchaser</i>		
	*	
Petitioners		<b>CASE NO. 2020-0182-A</b>
* * * * *		

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by Maddiemack, LLC, legal owner and Northpoint Development, LLC, contract purchaser (collectively the “Petitioners”) for property located at 6400 and 6402 Falls Road (collectively, the “Property”). The Petitioners are requesting variance relief from §§ 255.2, 243.1 and 243.2 of the Baltimore County Zoning Regulations (“BCZR”) to permit a front yard setback of 50 ft. in lieu of the required 75 ft. and side yard setbacks of 35 ft. and 25 ft. in lieu of the required 50 ft.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. A Site Plan was marked and accepted into evidence as Petitioner’s Exhibit 1. (Pet. Ex. 1). <sup>1</sup>

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Environmental Protection and Sustainability (“DEPS”) and from the Department of Planning (“DOP”). Those departments did not oppose the requested relief, subject to proposed conditions

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<sup>1</sup> The Bulk Regulations chart on the Site Plan inadvertently requests relief for a rear yard setback of 30 ft. in lieu of the required 50 ft. In fact, the proposed building meets the rear setback of 50 ft.

as set forth therein.

Adam Baker, Esquire and Rosenberg, Martin, Greenberg, LLP represented the Petitioners. Johnny Sweeney, a development manager with Northpoint Development, LLC, testified in support of the requested relief. Matt Bishop, a landscape architect and project manager from Kimley-Horn and Associates, Inc. testified in regard to the Site Plan which was prepared by Kimley Horn. There were also several individuals from the community who testified as described below.

Mr. Sweeney testified that the proposal in this case is for the construction of a 121,500 sq. ft., Class-A climate-controlled, self-storage facility spanning across the Property. The proposed building will be 3¾ stories above grade and 1 story below grade. (Pet. Ex. 3). All storage will be internal to the building; no outside storage is proposed. As a result of the market data research on the supply/demand for self-storage buildings in the area, Mr. Sweeney testified that there is a substantial undersupply of this use in the area.

Notwithstanding County approval of a limited exemption from a community input meeting under Baltimore County Code (“BCC”) §32-4-106(b)(8) (Pet. Ex. 2), Mr. Sweeney highlighted that Northpoint Development, LLC worked with the Ruxton-Riderwood-Lake Roland Improvement Association to find consensus between the proposed use and the community plan. Among the concessions made by the Petitioners was a step-back of the top floor of the building, architectural features including external arches, and landscaping designed to lessen the impact of the building. (Pet. Ex. 3).

Matt Bishop was accepted as an expert in landscape architecture as well as in the BCZR and development regulations under the BCC. Mr. Bishop assisted with the preparation of the Site Plan. The Property is 1.75 acres +/- . The Property is zoned ML-AS (manufacturing-light,

automotive service); there is also a small area zoned ML-IM (manufacturing-light, industrial major). The existing use on the Property is commercial. The surrounding uses are both commercial and light industrial.

Mr. Bishop explained that the requested variance relief is needed because the Property is unique and peculiar from surrounding properties for three (3) reasons: (1) the Property is irregularly shaped; narrow along the eastern boundary (Falls Rd.) and wider along the western boundary; (2) there is a riverine and stream nearby which generates a forest stream buffer along the western boundary; and (3) the grading of the Property sits at a higher elevation than that of Old Pimlico Rd. As a result of the unique physical features of the Property, designing a commercial or industrial building which is both uniform and efficient is difficult.

Mr. Bishop reiterated that if the variance relief is denied, the Petitioners will suffer a practical difficulty and unreasonable hardship in using the Property for its permitted uses. Mr. Bishop opined that the requested variances are in strict harmony with the spirit and intent of the BCZR and without injury to the public health, safety and general welfare. Specifically, the proposed building will use the existing, safe access onto Falls Rd. It will also meet all fire and building codes as well as all regulations in BCZR and BCC.

Testifying in opposition was Cynthia Daignault, 2019 Skyline Rd. Her home is approximately 1 mile from the Property. Having lived and worked in the Bare Hills area, Ms. Daignault articulated the following: (1) the community does not support or deny the requested relief; (2) there is no community need for another self-storage building given the EZ Storage business which not only occupies an adjacent property (Pet. Ex. 3 and 5b) but has 45 empty units; and (3) the proposed building does not comply with Ruxton-Riderwood-Lake Roland Community plan which recommends uses that add to the community/village/pedestrian friendly character.

Gary Warfield, Chairman of the Zoning Committee of the Ruxton-Riderwood-Lake Roland Improvement Association, testified that while the proposed plan was submitted to the members, there was not consensus to support or oppose the requested relief. On behalf of the Zoning Committee, Mr. Warfield expressed his appreciation at the cooperation and responsiveness of Petitioners to work with the Ruxton-Riderwood-Lake Roland Improvement Association.

Testifying in rebuttal, Mr. Sweeney emphasized that, even with the existence of the adjacent EZ Storage business, the market research was conducted nationally and resulted in a 400,000 undersupply. Mr. Bishop added that self-storage is a use permitted by right in the ML zone and that the community plan is a guideline; it is not mandatory.

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 described above, the evidence revealed that the Property is unique as a result of its irregular shape. Accordingly, if strict compliance with the area Bulk Regulations of the BCZR were required, the Petitioner will suffer a practical difficulty and an unreasonable hardship in being prevented from constructing a building for its permitted use. *Trinity Assembly of God v. People's Counsel* 407 MD 53, 79-84 (2008).

In addition, the collaboration between the Petitioner and the Ruxton-Riderwood-Lake Roland Improvement Association resulted in the repositioning of the proposed building away from both Old Pimlico Rd. and Falls Rd. This, in part, necessitated the requested 25 ft. southern side yard setback, and the 50 ft. front yard setback along Falls Rd. That concession was in the best

interests of the health, safety and general welfare.

THEREFORE, IT IS ORDERED, this 18<sup>th</sup> day of **November, 2020**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR §§ 255.2, 243.1 and 243.2 to permit a front yard setback of 50 ft. in lieu of the required 75 ft. and a side yard setback of 35 ft. and 25 ft. in lieu of the required 50 ft. is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners would be required to return the subject property to its original condition.
2. Petitioners must comply with the DOP and DEPS ZAC comments, copies of which are 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.

Signed \_\_\_\_\_  
MAUREEN E. MURPHY  
Administrative Law Judge  
for Baltimore County

MEM/dlm